(16,684.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 175.

THE KEOKUK AND HAMILTON BRIDGE COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from county court of Hancock county	1	1
Caption	1	1
Bill of exceptions	2	1
Statement	2	1
Objections of Keokuk and Hamilton Bridge Company	2	2
Exhibit A—Protest to board of review	6	4
B—Complaint to board of review	8	5
C—Notice of appeal from board of review	10	6
D—Proceeding before board of review	11	7
Complaint to board of supervisors, June 9, 1894, &c.	28	20
Stipulation to amend application for judgment	30	21
Objections of Keokuk and Hamilton Bridge Company	31	22
Transcript of evidence	33	23
Testimony of E. McClure	33	23
Tax judgment, sale, redemption, and forfeiture record	34	24
State rests	43	29
Testimony of W. A. Steinberger	43	30
Samuel Ball	44	30

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 12, 1898.

	Original.	Print.
Testimony of Robert Ferris	54	38
Samuel Speake	64	46
R. S. Owen	68	50
C. H. Farris	73	54
C. L. Bartlett	76	56
Geo. L. Evens	79	58
S. S. Gray	79	59
W. P. Raich	82	61
Henry Hoferdeitz	83	61
J. J. Heffleman	83	62
S. T. Layton	83	62
W. H. Walters	84	62
I. F. Landis	84	63
E. McClure	84	63
I. F. Landis	85	63
C. A. McConnell	85	63
Lewis Hull	86	65
W. H. Wier	87	65
S. Smith	88	66
J. E. Horney	88	66
J. H. Rhodes	89	67
Jas. W. Biggs	89	67
Geo. White	91	68
S. Wyles	91	69
H. Longshie	92	69
David Kemp	93	70
D. W. Logal	93	70
James Corbin	94	71
H. R. Dickenson	95	72
W. H. Prentice	98	75
Exhibit A—Letter, Prentice to Overman, July 26, 1894	100	76
Testimony of H. R. Dickenson (recalled)	101	76
W. R. Hamilton	103	79
K. H. Louis	104	79
Charles F. Muller	106	81
John A. Nicholls	118	89
Nathaniel H. Bartlett	123	93
J. H. Travis	129	97
John Menz	136	102
J. G. Garretson	137	103
A. Hoagland	137	103
James B. Diver	139	104
Wm. S. Sample	144	108
John Smith	149	112
John C. Daniels	153	114
H. McKenzie	161	120
D. C. Steely	169	125
J. R. Carpenter	172	127
M. Meigs	177	131
A. Wemper	182	134
Exhibit C—Certificate from State of Iowa	185	136
Assessor's book	188	138

	Original.	Print.
Exhibit D—Statement by Keokuk and Hamilton Bridge Company for year 1894	188½	138
D²—Proceedings of State board of equalization for 1894	189	140
E—Record of Supreme Court of the United States in case of Iowa *vs.* Illinois	202	147
Caption	202	147
Motion for leave to file	203	148
Order granting leave to file	204	148
Appearance for complainant	205	149
Bill of complaint	205	149
Answer	209	151
Replication	210	152
Cross-bill	211	153
Answer to cross-bill	215	155
Order fixing day for hearing	217	156
Motion for reassignment	218	156
Order reassigning for argument	219	157
Submission	219	157
Opinion (Field, J.)	220	158
Decree, January 3, 1893	234	166
Joint request for appointment of commissioners	235	167
Motion for appointment of commissioners submitted	236	167
Order appointing commissioners	237	168
Oath of Montgomery Meigs	238	168
Oath of John R. Carpenter	238½	169
Oath of Albert Wempner	239	169
Order filing commissioner's report, &c	240	170
Motion to confirm report	240	170
Report of commissioners	241	170
Plat with report of commissioners	243	171
Order confirming report	244	171
Docket entries	245	172
Clerk's certificate	247	173
Exhibit F—Further record of Supreme Court of the United States in case of Iowa *vs.* Illinois	248	173
Opinion (Fuller, C. J.)	248	173
Order setting aside order confirming report of commissioners	252	175
Clerk's certificate	252	175
Admission as to facts	254	175
Testimony of M. Leroy	254	176
James W. Campbell	254	176
Extract from assessor's book of Durham township	268	184
Carthage township	270	185
Wilcox township	271	186
Chili township	272	186
Pontoosuc township	274	187
Sonora township	275	188
Prairie township	276	188
Bear Creek township	278	189

	Original.	Print.
Extract from assessor's book of Harmony township	279	190
Hancock township	280	190
Rocky Run township	282	191
Fountain Green township	283	192
Appanoose township	284	192
Judge's certificate to bill of exceptions	286	193
Judgment	287	193
Appeal bond	289	194
Receipt of collector	290	195
Clerk's certificate	291	195
Assignment of errors	292	196
Order taking cause under advisement	295	197
Opinion	295	198
Judgment	298	199
Petition for rehearing	299	200
Order denying petition for rehearing, &c	302	201
Order for stay of proceedings	302	201
Petition for writ of error	302	202
Allowance of writ of error	306	204
Bond on writ of error	307	204
Citation and service	309	205
Clerk's certificate	310	206
Writ of error	311	206
Return to writ of error	313	207
Assignment of errors	314	208

1 In the Supreme Court, Central Grand Division, June Term, A. D. 1896.

UNITED STATES OF AMERICA:

STATE OF ILLINOIS,
Supreme Court, Central Grand Division, } ss:

Proceedings had before the honorable the supreme court of the central grand division of the State of Illinois, begun and held at Springfield, to wit, on the first Tuesday in the month (being the second day) of June, A. D. 1896.

Present: Benjamin D. Magruder, chief justice; Alfred M. Craig, justice; Jesse J. Phillips, justice; Jacob W. Wilkin, justice; David J. Baker, justice; James H. Cartwright, justice; Joseph N. Carter, justice; Maurice T. Maloney, attorney general; E. A. Snively, clerk; E. A. Baxter, sheriff.

Be it remembered that heretofore, to wit, on the 28th day of May, A. D. 1896, there was filed in the office of the clerk of said supreme court a record, which is in the words and figures following, to wit:

STATE OF ILLINOIS,
County of Hancock, } ss:

At a regular term in probate of the county court, begun, continued, and held at the court-house, in the city of Carthage, in said county and State, on the first Monday in May, in the year of our Lord one thousand eight hundred and ninety-five, the same being the 6th day of May, 1895.

Present: Hon. David E. Mack, judge; William H. Hartzell, State's attorney; Elzey McClure, clerk; Robert Aitchison, county treasurer, &c.; Chas. Weisemann, sheriff.

2 In the County Court of Hancock County, Illinois, to the May Term Thereof, 1895.

THE PEOPLE OF THE STATE OF ILLINOIS ex Relation of Robert Aitchison, Collector of said County,
v.
THE DELINQUENT TAX LIST OF SAID COUNTY. } Application for Judgment.

On objections by the Keokuk and Hamilton Bridge Company, a consolidated corporation formed by the consolidation of a corporation in Iowa with one in Illinois.

Be it remembered that heretofore, to wit, on the 1st day of May, 1895, said Robert Aitchison, collector of said county of Hancock, filed in the office of the county clerk of said county a book called The Tax, Judgment, Sale, Redemption & Forfeiture, Record, covering delinquent tax lists, among which *was* two tracts belonging

to said bridge company, and therewith filed the printer's certificate of notice of application for judgment thereon.

Thereupon, on May 3rd, 1895, came the said Keokuk and Hamilton Bridge Company, by G. Edmunds, its attorney, and filed objections to judgment against the property of said bridge company as follows:

In the County Court of Hancock County, Illinois.

In the Matter of the Application for Judgment on the Delinquent Tax List by the Collector of Hancock County, at the May Term, 1895.

Now comes the Keokuk & Hamilton Bridge Company, a consolidated corporation, formed by the consolidation of a corporation of the State of Iowa with a corporation of the State of Illinois, and owning the property hereinafter described, and objects to judgment against the said lands and property for the tax claimed to
3 be due thereon:

1st. Because the property assessed and against which said judgment is asked is not all subject to taxation in the State of Illinois, over 600 feet, lineal measure, of said bridge being in the State of Iowa, and not subject to taxation in Illinois, which property is described in said application for judgment as follows, viz: The Hancock County Bridge Company, called the Keokuk Bridge Company, called also the Keokuk & Hamilton Bridge Company; all the lands of the Keokuk and Hamilton Bridge Company situated in Hancock county, Illinois, and lying and being in and on Island No. 4, in the S. W. Q. of section thirty (30), in township five (5) north, range eight (8) west, in said county, and extending westwardly into the Mississippi river to the State line between the States of Illinois and Iowa, and more particularly described, viz: A strip of land 80 feet wide, more or less, the center line of said strip of land commencing at a point in the center of Railroad avenue, in the plat of ground known as the Keokuk & Hamilton Ferry and Manufacturing Company's addition to the city of Hamilton, in said county, 707¾ feet south 72° 40′ east of the center of the east end of said bridge, thence running north 72 deg. 40 min. west to the east end of said bridge; thence continueing the same course along the center line of said bridge 1,565 ft. to the State line between the States of Illinois and Iowa, including the slopes, walls, embankments, abutments, piers, and bridge structures and improvements thereon section 30, township 5 N., range 8 west.

Tax, $2,708.61.

And said application for judgment was filed May 2nd, 1895.

2nd. Said tangible property was and is fraudulently assessed by the assessor of Montebello township at largely more than its fair cash value, where all other property in said township is assessed by said assessor at not exceeding ⅓ its fair cash value, and most of it
4 at less than ¼ its fair cash value; that said assessment was so made by said assessor for the fraudulent purpose of compelling said objector *of* pay more than its just proportion of taxation.

3d. Over 600 feet, lineal measure, of said bridge so assessed *is* located in the State of Iowa and *is* not subject to taxation in the State of Illinois.

4*d*. On the 4th Monday of June, A. D. 1894, objector, by its superintendent, appeared before the board of review of said town of Montebello and presented the grievance of objector and asked that said amount be changed *to* as to charge only objector's said property in Illinois and at a rate not exceeding the rate at which other property in said town is charged or assessed, or that the assessment against the other property in said town be raised to the ratio of assessment of objector's said property; that a hearing was had thereon and said grievance refused, from which action of said town board of review this objector appealed to the board of supervisors at its July meeting, — of July, 1894, and presented to said board its said grievance and appeal, which was filed July 9th, 1894, containing, among other things, the action of said board of review, the admissions of Prentice, the assessor of said town (who made said assessment), to and in the presence of said board of review, as follows, viz:

To the board of supervisors of the county of Hancock, July meeting, 1894:

The Keokuk & Hamilton Bridge Company, a consolidated corporation of the States of Iowa and Illinois, owning the bridge across the Mississippi river in Hancock county, Illinois, between the city of Keokuk, in Iowa, and the city of Hamilton, in Illinois, across the State line between the said States, now comes, by J. H. Cole, its superintendent, and presents as its grievance complaint that the assessment of the tangible property of said bridge company as assessed by the assessor of Montebello of the bridge proper and approach is more than the fair cash value of the property in the State of Illinois; that the property is assessed at from six to eight times the assessment other property in said town is assessed for; that over 600 feet of the bridge in Iowa *is* assessed in Illinois; that said assessment is so made by the assessor for the fraudulent purpose of compelling said bridge company to pay more than its just proportion of taxation.

That said bridge co*mapny* on the 4th Monday of June, 1894, presented to the board of review of said town of Montebello said grievance and asked that its assessment be lowered to conform to the assessment of other property in the town, or that the owners of other property be notified and their assessment raised to conform — that of the bridge company, and pointed out 49 pieces of property in said town assessed by its said assessor at an average of not over 25 per cent. of its fair cash value, with the owners' names; that the valuation of the said bridge property so situated in Iowa be deducted from said assessment.

The protest filed with said board of review is herewith filed and made a part of this complaint, marded "Exhibit A."

The complaint against the different properties pointed out to said board is filed herewith as "Exhibit B" and made a part hereof.

The board of review refused the relief asked, from which said bridge company appealed and gave notice thereof; which notice is herewith filed and made a part hereof, marked "Exhibit C."

That said bridge company files herewith and makes a part of this complaint a shorthand report of the proceedings before said board of review, containing proof and admissions before said board of review, which it makes a part of this complaint and is marked "Exhibit D."

Said bridge company presents this grievance and asks that that part of said bridge not in Illinois be stricken out and the assessment of said bridge be reduced to correspond.

6 That said assessment should be reduced to the same ratio of value of other property in said town of Montebello, or that the assessment of other property in said town of Montebello be raised to conform to the assessment of said bridge property, not only as to the property pointed out in said "Exhibit B," but as to all property in said town—for the owners of such property and description thereof the assessment is here referred to and made a part hereof—and that the owners thereof be notified and their assessment raised accordingly.

All which is respectfully submitted.

THE KEOKUK & HAMILTON BRIDGE COMPANY,
By J. H. COLE, *Superintendent.*

G. EDMUNDS, *Att'y.*

July 9th, 1894.

"EXHIBIT A."

HAMILTON, ILL., *June 25th*, 1894.

Mess. Glazebrooke, Coffman, & Prentice, township board of review for Montebello tp., Hancock Co., Ill.

GENTLEMEN: On behalf of the Keokuk & Hamilton Bridge Company I herewith enter formal protest against the assessment as returned by the assessor for the year 1894 against the property of said bridge Co. for the following reasons:

1st. That the assessor has assessed the property of this company at more than its fair cash value on May 1st, 1894, or at any other time within one year previous to that date, and that by his own admissions before your honorable body has not assessed any other property in said township at more than 25% of its fair cash value, and much of it, according to his own statements, at not to exceed 20% of

7 its fair cash value, so that the property of said company shall be made to pay from 6 to 8 times more than its fair proportion of the taxes.

2nd. That the 14th amendment to the Constitution of the United States has been violated, in that equal justice and protection to the property of the said bridge company has been denied.

3rd. That the property assessed and described by the assessor lies partly in the State of Iowa and is not subject to taxation in Illinois.

4th. That by the admissions of the asssessor no competent surveyor was employed to measure and determine the distance to the "middle of the main channel of the river," as required by the statute, but that a distance has been arbitrarily assumed and incorporated in the description by the assessor that is incorrect, as it does not mark the middle of the main channel of the Miss. river at this bridge.

5th. That the assessor did not seek information as to the value of this property, which is of an unusual character, but fraudulently and arbitrarily fixed a valuation upon this property far in excess of the actual cash value of that part lying in the State of Ill. for the fraudulent purpose of compelling said company to pay more than its fair proportion of the taxes in Illinois.

Resp. yours, J. H. COLE,

Agent and Superintendent of the Keokuk & Hamilton Bridge Co.

8 "EXHIBIT B."

HAMILTON, ILLINOIS, *June 25th*, 1894.

To the township board of review, Montebello township, Hancock county, Illinois—Messrs. Glazebrook, Coffman, and Prentice.

GENTLEMEN: I herewith submit, as agent and superintendent of the Keokuk & Hamilton Bridge Company, complaint against the assessments as returned by the assessor of Montebello township for the year 1894, on the assessment made against the following persons and upon the property herein described, and ask that the same be revised and the assessments made to comply with the law and the oath of the assessor so that they shall be assessed at their fair cash value:

John McCrory, N. E. ¼, sec. 3.
I. N. Hosford, S. ½ N. E., sec. 3.
R. M. Wilson, 80 acres of S. ½ N. E. ¼, sec. 4.
S. E. Simpson, S. ½ S. W. ¼, sec. 4.
Rollin Sherwood, N. ½ S. W. ¼, sec. 4.
H. C. Lehman, N. ½ S. W. ¼ S. W. ¼, sec. 4.
Cyrus Felt heirs, N. W. ¼, sec. 17.
F. M. Herold, W. end of S. ½ S. E. ¼, sec. 17.
Joseph Sogier, S. W. ¼ N. E. ¼, sec. 18.
A. Troutfetter, N. E. ¼ N. E. ¼, sec. 20.
C. Dadant, N. W. ¼ N. E. ¼, sec. 20.
D. Hanson, part of S. ½ N. E. ¼ 4, sec. 25.
D. Hanson, E. ½ N. E. ¼, sec. 26.
H. R. Dickenson, W. ½ N. E. ¼, sec. 26.
H. R. Dickenson, N. W. ¼, sec. 26.
Heirs of A. Grubb, E. ½ N. E. ¼, sec. 27.
Heirs of E. Grubb, W. ½ N. ½, sec. 27.
9 R. F. Smith, Sr., part of N. W. ¼, sec. 27.
Geo. B. Safford, S. ½ S. W. ¼, sec. 28.
E. Humphrey, W. ½ S. E. ¼, sec. 28.
C. C. Safford, N. E. ¼, sec. 29.
E. Humphrey, N. ½ N. W. ¼, sec. 32.

E. Humphrey, S. E. ¼ N. W. ¼, sec. 32.
J. P. La Monte, S. E. ¼, sec. 32.
W. H. Prentice, N. E. ¼ of sec. 33.
A. L. Connable, W. ½ N. E. ¼, sec. 34.
W. H. Prentice, N. W. ¼, sec. 34.
E. J. Hall, part of N. W. ¼, sec. 28.
A. L. Miller, 18 acres N. W. ¼, sec. 28.
C. W. Baldwin, S. W. ¼, sec. 35.
Chas. Grubb, 100 acres of S. E. ¼, sec. 35.
Chancey G. Robinson, S. E. ¼, sec. 20.
O. E. Pence, part of S. W. ¼, sec. 21.
H. C. Hanson, lots 10, 11, and 12, block 13, Bartlett & Gordon's add. to Hamilton.
Mrs. M. B. Lane, store building, lot 1, bl. 17, B. & G. add. to Hamilton.
Geo. Hindman, N. W. ¼, sec. 24.
D. C. Baxter, W. ½ S. W. ¼, sec. 24.
John Lively, E. side S. E. ¼, sec. 24.
D. Hanson, S. ½ N. E. ¼, sec. 25.
Geo. W. Kirkpatrick, part of S. E. ¼, sec. 25.
Kate Burkert, S. E. ¼, sec. 27.
C. N. Dennis, part of S. E. ¼, sec. 29.
John Lohmer, S. ½ N. E. ¼, sec. 34.
J. E. Morrison, S. W. ¼, sec. 34.
Sarah Stewart, N. E. ¼, sec. 35.
F. G. Comer, lot 2, N. E. ¼, sec. 36.
S. C. Comer, N. W. ¼, sec. 36.
10 J. A. Price, W. part S. W. ¼, sec. 36.
John Mulch, E. part S. W. ¼, sec. 36.

Respectfully, J. H. COLE,
Agent and Superintendent of the Keokuk & Hamilton Bridge Company.

"EXHIBIT C."

HAMILTON, ILL., *June 25th*, 1894.

Mess. Glazebrooke, Coffman, & Prentice, township board of review for Montebello tp., Hancock Co., Ill.

GENTLEMEN: You are hereby notified that an appeal will be taken from your action upon the assessment against the property of the Keokuk and Hamilton Bridge Co. for the year 1894 to the board of supervisors of Hancock Co.

Resp. yours, J. H. COLE,
Agent and Superintendent of the Keokuk and Hamilton Bridge Co.

11 "EXHIBIT D."

HAMILTON, ILL., *June* 25, 1894.

Proceedings before the board of review, Montebello township, Hancock county, Ill.

Messrs. Glazebrook, Coffman, and Prentice.

Mr. J. H. Cole, on behalf of the Keokuk & Hamilton Bridge Company, appeared, and the following proceedings were had:

Mr. COLE: Mr. Chairman, I appear here as the representative of the Keokuk & Hamilton Bridge Co., and would like to make some inquiries in regard to the assessment here of this bridge company's property, over which we have had some discussions and disagreements. I notice in the assessment book here the assessor has marked out the description of the bridge property as furnished by the clerk and inserted fifteen hundred and sixty-five (1,565) feet to the State line, &c. How did you determine that distance, Mr. Prentice?

Mr. PRENTICE: I determined it by a map I got hold of.

Mr. COLE: This map you had you did not have made by a competent surveyor, did you?

Mr. PRENTICE: It was made by Government officials.

Mr. COLE: Did you employ a competent surveyor to determine the distance?

Mr. PRENTICE: No, sir.

Mr. COLE: You estimated it from the map?

Ans. Yes, sir.

Mr. COLE: Did you find the bridge property properly located on the map you had?

Ans. Yes, sir.

Mr. COLE: You know it was properly located?

A. I presume it was.

Mr. COLE: You never tested it to see whether it was or not?

A. No, sir.

Mr. COLE: Did they give the distance from the shore line?

12 A. No, sir; it was from the end of the bridge.

Q. How far did you estimate the length of the bridge to the deep water?

A. 1,755 feet.

Q. From the shore?

A. No, sir; from the end of the bridge; from the end of the approach to the bridge.

Q. How far was it from the end of the shore line?

A. I didn't see any shore line on the map.

Q. The map could not be a very correct one, then?

A. I think it was.

13. Who made it?

Ans. One of the Government officials.

14. When was it made?

Ans. Within two years, I think.

15. Do you know the date of it?

Ans. No, sir.

16. Where did you get it?

Ans. I got it from Capt. Anthony.

17. You don't know anything about the measurements except what you got from the map?

Ans. That is all.

18. You don't know what the measurement would be from the shore line?

A. No, sir.

19. All you know is that you took a map and estimated the distance on that and put that in your description?

A. I asked Capt. Anthony to give me the distance from the bridge proper to the deep water, and he took his map and rule and laid it down on the map, and says it is 1,775 feet.

20. You know what the statute requires in these matters?

A. I suppose it requires a man to know what he assesses.

13 21. What day did you actually view this bridge with the idea of making an assessment on it?

A. I didn't go to it on any special day that I know of. I have been across the bridge a good many times and looked at it.

22. Do you know what it is constructed of?

A. I guess I have eyes.

23. Well, what is it made of?

A. Iron *and* steel or iron and steel.

24. And by the information you have you don't know whether it is iron or steel or what it is, do you?

A. I would say it is part wrought and part cast iron.

25. How much do you think is cast and how much wrought?

A. I don't know.

26. You know there is a great difference in the price of these materials, don't you?

Ans. Yes, sir; but I tell you, Mr. Cole, when I go to assess a man's farm I don't ask him how much clay there is in his land or how much black soil there is.

27. I guess if you went into a neighborhood where it was all clay you would put a different value on it from what you would out on the prairie, where it is all black soil?

Ans. Yes, sir.

28. If you found one bridge that was all steel a nd one that was all iron, you would say the steel bridge was worth the most?

A. Yes, sir; I presume so.

29. Is there any doubt about it?

A. I presume it is owing to the cost of the materials.

30. Did you find out as to the cost of materials in this bridge?

A. I believe I was at Carthage at one time and heard your testimony as to the values.

31. That is all the information you have?

Ans. Yes, sir.

14 32. You never came to see me about it?

Ans. No, sir.

33. You did not ask information from any one else?
Ans. Yes; I did.
34. I thought you said all you knew was what you heard at Carthage?
A. I have talked to people.
35. Who?
Ans. Capt. Anthony, for one.
36. He is a hydraulic engineer, is he not?
Ans. I don't know.
37. He is in charge of the water-works survey?
Ans. Yes, sir.
38. No one here knows what he is further than that he appears in that survey?
A. No, sir.
39. Who else did you talk to?
Ans. Different parties.
40. Were they experts in bridge-building?
A. I don't know that they are.
41. Then you have not sought information from experts?
A. No, sir.
42. They did not know anything about the value of the property—the people you inquired about had nothing to do with the business of bridge-building?
Ans. No, sir.

Mr. J. H. COLE: I protest against the assessment made by the assessor against the property of the bridge company under the conditions named here by the assessor and against the description as rendered by him, and ask you to reduce the assessment of this bridge company's property to $25,000 for the State of Illinois. Will you consider the matter?

Chairman GLAZEBROOK. We will consider your request.

Mr. COLE: I have some other matters to bring before you. Will you hear them now?

Mr. GLAZEBROOK: As well now as any time.

Mr. COLE: Mr. Prentice, please turn to land belonging to Cyrus Felt heirs, N. E. ¼ of section 3.
A. That land belongs to John McClaughry.
43. All right. How much is it assessed for?
Ans. $1,700.
44. Is that the fair cash value of the land?
A. Yes, sir; in proportion to the other land.
45. Is that all that property is worth?
Ans. No, sir.
46. What do you consider it is worth? What would it bring at a fair cash sale?
Ans. I suppose $40 per acre.
47. How much all told?
Ans. $6,400.
58. Next take the I. N. Hosford's land; what is it assessed at?
Ans. $1,600.

49. Is that the fair cash value of the land?
A. Yes, sir; in proportion to the other lands.
50. Is it all it would sell for at a fair voluntary sale?
A. That land would not sell as high as the other.
51. What would it bring?
Ans. Probably $35 per acre.
52. Take R. M. Wilson's land, S. ½ N. E. ¼, sec. 4; what is it assessed?
A. $800.
53. How much do you think it is worth in cash?
A. About $35 per acre; $2,800 altogether.
54. Take S. E. Simpson's land, S. ½ S. E. ¼, sec. 4; how is it assessed?
A. It is put at $850.
16 55. Is that the fair cash value?
Ans. Yes, sir; I think so.
56. Is that all it is worth?
Ans. I think it is worth $3,500.
57. H. C. Lehman's land, N. ½ S. W. ¼ S. W. ¼, sec. 4; what is it assessed?
A. There is 35 acres of it. It is assessed at $350.
58. What is it actually worth?
A. It is a rough piece of land and is not worth over $30 per acre.
59. Cyrus Felt heirs, N. W. ¼, sec. 17; what is it assessed for?
A. $2,000.
60. What is it worth at a fair cash price?
A. It is a rough piece of land; not over $30 per acre.
61. That is not assessed in proportion with other lands; it is higher?
A. Yes, sir.
62. Why is that?
Ans. Because it has pretty good improvements.
63. Then you thought it was worth more?
A. The improvements have a little valuation, but not much, because the higher a piece of land is improved the more it costs to keep it up.
64. Do you think $30 per acre is all it is worth?
A. I would not give more for it.
65. Then why do you do him the injustice of assessing him higher?
A. It is necessary where a man has some improvements to consider the improvements.
66. You don't seem to have considered them in the price you have named.
A. No, sir; because in reality if a man wants a place sometimes the improvements may not balance the difference in the quality of the land.
67. Turn to F. M. Herold's land, W. end S. ½ S. E. ¼, sec. 17, 79 acres; what is it assessed at?
Ans. $975.
17 68. What do you think it is worth per acre?

Ans. $40 per acre.

69. Take the property of Joseph Sogier, S. W. ¼ N. E. ¼, sec. 18; what is it assessed at?

A. $250.

70. What is the fair cash value of that?

A. I should say about $35 per acre.

71. $1,400 for the forty acres?

Ans. Yes, sir.

72. Take A. Troutfetter's, N. E. ¼ N. E. ¼, sec. 20; how much is it assessed for?

Ans. $400.

73. And what is that forty acres worth with its improvements?

A. It would bring about $40 per acre.

74. C. Dadant, N. ½ N. E. ¼, sec. 20; how much is it assessed for?

A. $1,000.

75. How much would it sell for cash?

Ans. $40 per acre.

76. D. Hanson, S. ½ N. E. ¼, 69 acres, in sec. 25; what is it assessed at?

Ans. $935.

77. What is it worth per acre?

Ans. $40 per acre.

78. D. Hanson's, E. ½ N. E. ¼, sec. 26; what is it assessed for?

Ans. $800.

79. What is it actually worth per acre?

Ans. $40.

80. Then it is assessed at about 25% of its value?

Ans. Yes, sir.

81. H. R. Dickenson, W. end N. E. ¼, sec. 26; what is it assessed for?

A. $1,600.

82. What is it worth?

Ans. $40 per acre.

83. Then it is assessed at 25% of its value?

Ans. Yes, sir.

84. Heirs of A. Grubb, E. ½ N. E. ¼, sec. 27; what is it assessed for?

Ans. $950.

85. What is it worth?

Ans. $45 per acre; $3,600.

86. W. ½ N. E. ¼, sec. 27, heirs of E. Grubb; what is it assessed for?

A. $950.

18 87. What is it actually worth?

Ans. 445 per acre; $3,600.

88. R. F. Smith, S. W. ¼, sec. 27; what is it assessed for?

A. $2,000.

89. What is it actually worth?

Ans. About $40 per acre.

90. $6,400 for the whole tract?

Ans. Yes, sir.

91. Then it is assessed higher than other property we have been over?

A. Yes, sir.

92. Why is that?

Ans. It has a new house on it.

93. Then it is not worth more than $40 per acre?

Ans. No, sir; there is a school-house on it, and that is a drawback.

94. Take the land of Geo. B. Safford, S. ½ S.W. ¼, sec. 28, 80 acres; what is it assessed at?

Ans. $850.

95. What is it worth per acre?

Ans. About $25.

96. E. Humphrey, W. ½ N. E. ¼, sec. 28; what is it assessed for?

A. $1,100.

97. What is it worth?

Ans. $50 per acre; $4,000 for the tract.

98. That is a little higher than you have assessed other property?

A. Yes, sir.

99. What reason had you for assessing him higher than his neighbors?

A. I have not assessed him higher than the others in proportion to the values of the property.

100. Take the land of C. C. Safford, lot 20, in the N. E. ¼, sec. 29. How many acres are there of it, and at what is it assessed?

A. There are 79½ acres, assessed at $1,150.

101. What is it worth per acre?

Ans. About $50 per acre.

102. E. Humphrey's land, N. ½ N. W. ¼, sec. 32. How many acres, and what is it assessed at?

Ans. There are 86.9 acres, assessed at $770.

103. What is it worth?

Ans. Part of it is rough land. It is not worth over $25 per acre for the unimproved and $35 for the improved. Some of it is improved and some not.

19 104. About $2,400 for the whole tract?

Ans. Yes, sir.

105. J. P. La Monte, the S. E. ¼ of sec. 32; what is it assessed for?

A. $1,400.

106. What is that piece of property worth?

Ans. $30 per acre; $4,800.

107. 25 % of this would have placed his assessment at $1,200?

Ans. Yes.

108. Why is he assessed higher than other people in the township?

A. He is not. His taxes have been reduced. It was formerly assessed at $1,600, and I reduced it to $1,400.

109. I am not contradicting your statements. I am simply taking your testimony, and ask you why you have made this difference. Why was his assessment made higher in proportion to its value than the assessment on other lands?

(No answer.)

110. Take the land of W. H. Prentice, N. E. ¼, sec. 33; what is it assessed at?

Ans. $1,600.

111. What is it actually worth?

Ans. I suppose $50 per acre.

112. The whole tract would be $8,000?

Ans. Yes, sir.

113. That would be 20 per cent. of its value?

Ans. Yes, sir.

114. That is your own land?

Ans. Yes, sir.

115. Why did you assess it at less than you did your neighbor's?

A. I have assessed it at what I did others around me.

116. Why is it, then, at 20 % of its value, some at 25 %, and some of it at more than 25 %?

Ans. I assessed it at what I thought a fair valuation of it.

117. You have stated that it is worth $8,000, and you assessed it at $1,600.

Ans. Yes; I assessed it in proportion with others.

Now, Mr. Cole, I know more about this business than you do, and my books show what I have done. If you have any objections to these books, you have a right to object to them. What I have done is shown in that book. It is my official act, and I stand by it.

Mr. COLE: I am simply trying to find out something I don't know. I have not brought any witnesses here to contradict you.

118. We'll take A. L. Connable's land, W. ½ N. W. ¼, sec. 34. What is it assessed at?

Ans. $860.

119. What is it worth?

Ans. I don't know. It sold not long ago.

120. What do you think it is worth?

Ans. About $40 per acre.

121. W. H. Prentice, N. W. ¼, sec. 34. What is it assessed for?

A. $1,600.

122. What is it worth?

Ans. $50 per acre.

123. Assessed at 20 % of its value?

Ans. Yes, sir.

124. Take E. J. Hall's land, lots 1 and 5, sec. 28. How is that assessed?

A. It is put at $1,100.

125. How many acres are there of it?

Ans. 55.

126. What is your judgment of what it is worth?

Ans. About $50 per acre.

127. That would be $2,750 for the tract?

Ans. Yes, sir.

128. And it is assessed at $1,100?

A. No; hold on; I guess it is worth more than that—say $60 per acre.

133. That would make it worth $3,300?

A. Yes, sir.

134. Then it is assessed at ⅓ of its value?

Ans. Yes, sir.

135. More than any other we have found?

Ans. Yes, sir; there is some in the township assessed at ⅓.

136. Take A. L. Miller's 18 acres in the same quarter. What is it assessed at?

Ans. $200.

137. What is it worth?

Ans. Not over $900; $50 per acre.

138. These two pieces of property lie side by side?

Ans. No, sir.

139. Don't they join?

Ans. No, sir.

140. What separates them?

Ans. A tract of land of five acres; one is improved and the other is not.

141. The value of Miller's land is $900 and you assess it at $200?

A. Yes, sir.

142. And you assess Hall at $1,100 when his land is worth $3,300?

21 A. Yes, sir.

143. You have different percentages for different men?

A. Yes, sir; you have to value the land differently.

144. Take C. W. Baldwin's land, S. W. ¼, sec. 35. What is it assessed at?

A. $1,575.

145. How much is it worth per acre?

Ans. $50.

146. For the whole tract, $8,000?

Ans. Yes, sir.

147. Assessed at less than 20 % of its value?

Ans. Yes, sir.

148. Chas. Grubb, 100 acres in S. E. ¼, sec. 35. What is it assessed at?

A. $1,500.

149. What is it worth per acre?

Ans. The man on the land told me it is worth $60 per acre, but I would not give it for it.

150. What do you think it is worth?

Ans. $50 per acre.

—. C. G. Robinson, S. E. ¼, sec. 20. What is it assessed for?

Ans. $1,600.

152. What is it worth per acre?

Ans. I would say about $45.

153. George Hindman, N. W. ¼, sec. 24. What is it assessed for?

A. $2,000.

154. What is it worth?

Ans. $60 per acre.
155. That would be $9,600 for the tract?
A. Yes, sir.
156. Assessed at a little over 20 %?
. Yes, sir.
7. D. C. Baxter, W. ½ S. W. ¼, sec. 24. What is it assessed at?
A. $850.
158. What is it worth?
Ans. About $40 per acre; $3.200.
—. John Lively, E. side S. E. ¼, sec. 24; assessed at what?
Ans. $1,500.
160. What is it worth per acre?
Ans. I should say $50.
161. $6,000 for the tract?
Ans. Yes, sir.
162. That would be 20 % of its value?
Ans. Yes, sir.
163. S. ½ N. E. ¼, sec. 25, D. Hanson. How many acres?
Ans. 69.
164. What is it assessed at?
Ans. $935.
22 164. What is it worth?
Ans. About $50 per acre.
165. Part of S. E. ¼, sec. 25, Geo. Kirkpatrick. How much is it assessed at?
Ans. $950.
166. What is it worth per acre?
Ans. $40.
167. Kate Buckert, S. E. ¼, sec. 27, 160 acres. How much is it assessed at?
—. $1,800.
168. What is it worth?
Ans. About $55 per acre.
169. Did you have any spite against her that you assessed her above her neighbors?
Ans. No, sir.
170. Then why is her percentage so much higher?
A. Because her land is better.
171. C. N. Dennis, part of S. E. ¼, sec. 29, 63 acres. What is it assessed?
A. $1,200.
172. What is it actually worth?
Ans. Four times that.
173. John Lohmer, S. ½ N. E. ¼, sec. 34; assessed at what?
Ans. $860.
174. How much is it worth?
Ans. $50 per acre, or $4,000.
175. J. E. Morrison, S. W. ¼, sec. 34?
Ans. $1,000.
176. 100 acres?
Ans. Yes, sir.

177. How much do you value it at?
Ans. $50 per acre.
178. $5,000 for the tract?
Ans. Yes, sir.
179. Assessed at 20 %?
Ans. Yes, sir.
180. That is the neighborhood you live in?
Ans. Yes, sir.
181. Sarah Stewart, N. E. ¼, sec. 35, 154 acres. What is it assessed for?
A. $1,400.
182. How much is it actually worth?
Ans. $50 per acre.
183. Then it is not assessed at 20 %?
Ans. No, sir.
—. F. C. Comer, lot 2, N. E. ¼, sec. 36, 31.7 acres. What is it assessed?
A. $375.
185. What is it actually worth?
Ans. Perhaps $40 per acre.
186. S. C. Comer, N. W. ¼, sec. 36. What is it assessed at?
Ans. $1,650.
187. How much is that land worth?
Ans. $50 per acre; $8,000.
188. John A. Price, W. part N. W. ¼, sec. 36. What is it assessed at?
A. $900.
23 189. What is the land worth?
Ans. $50 per acre; $4,000.
190. John Mulch, E. part S. W. ¼, sec. 36, 73 acres. What is it assessed?
A. $750.
191. What is it worth?
Ans. About $40 per acre.
192. We will try some of the Hamilton City property. Do you know the description of Glazebrook's store building over there on that corner?
Ans. That belongs to Mrs. Lane.
193. How many feet is there of it?
Ans. 29½.
194. What is it assessed for?
Ans. $560.
195. What is the building and lot actually worth?
A. About four times that.
196. So she is assessed at 25 %?
Ans. Yes, sir.
197. You used to own that lot, Mr. Glazebrook?
Ans. Yes, sir.
198. You know Henry Hanson's property here in town?
Ans. Yes, sir.
199. What is it assessed for?

Ans. $700.
200. What is it actually worth?
Ans. About four times that.
201. Hanson is a good friend of yours?
Ans. I don't know.
202. Didn't he vote for you?
Ans. I don't believe he did.

Mr. GLAZEBROOK: We will hear you again this afternoon at 4, Mr. Cole.

Met as appointed at 4.

Mr. COLE: Mr. Prentice, what is the description of that property down in the bottom alongside the dike?
Ans. It is on the book.
2. Can you find it for me?
Ans. I don't know just where it is.
3. Who is it assessed to?
Ans. The Keokuk and Hamilton Manufacturing Company, I suppose.
4. The ferry Co.?
Ans. I think probably it is.
5. The Keokuk and Hamilton Ferry Co., fractional E. 10 acres of the S. E. corner lot 6, N. W. ¼, sec. 31. Is that part of this alongside the dike?
Ans. 31 is down that way.
6. That number of acres, 58.91 acres, that is assessed at $700. Is that right?
Ans. That is what it is assessed for.
24 7. Is that the fair cash value of it?
Ans. Do you consider it so?
8. No, I don't.
Ans. We are here for you to submit proof.
9. I asked you a simple question.
Ans. I answered you the same way.
10. I did not expect to get any answers this afternoon, so what you say is not at all disappointing. Mr. Chairman, will you tell me what the decision of the board was on my motion to reduce?

Clerk Coffman read the decision of the board on the motion of the bridge company to reduce the assessment to $25,000:
"Resolved, That the assessment be approved as returned by the assessor."
Carried.

Mr. COLE: Mr. Prentice, in your description of the bridge property you have included 1,565 feet of the bridge proper?
Ans. Yes, sir.
12. And your assessment is based on that amount of the bridge?
Ans. Yes.
13. And you consider that as ⅓ of the value of the bridge and approach?

A. I have assessed it at that.

14. Is that your judgment of its value?

Ans. That is my official act.

15. I understand you to say that is your official act, and that your judgment is that 1,565 feet of that bridge and approach is worth 3 time- $85,000?

A. Yes, sir.

16. Do you rate the approach at the same rate that you do the bridge?

A. No, sir; I don't think I did.

17. What did you count the 700 feet—I believe you have it 700¾ feet—of the approach worth?

A. I would like to ask you. What do you consider the cost to build that approach?

18. I have proven a number of times, by experts, that it could be replaced for $10,000.

PRENTICE: The actual first cost?

A. No, sir; what it would cost to replace it today.

25 Q. What I want to know is the first cost of it.

A. I have no means of knowing that.

Q. Well, that is what I want to know.

Mr. COLE: That has nothing to do with this question of its value now. Your land that you rate at $50 per acre may have been entered at 50 cents an acre, or you may have paid $50 an acre for it and yet it is not worth over $40 per acre. Your duty was to find what was the value of the property on the first day of last May, and what I want to find out now is how you make up the valuation of that bridge as $85,000. You say you assigned 700 feet to the approach?

Ans. It all goes into one description; it is all included in the bridge. That description didn't require me to set aside any part. I arrived at my conclusion of its value, and if it lies in your power to show that it is not of that value it is your privilege to do so.

19. What I ask you is at how much you valued that approach; you said you did not consider it worth as much as the bridge. I want to know how much you count it as worth. Do you think it is worth ½ as much per running foot as the bridge?

Ans. Yes, sir.

20. Do you think 3 feet of that approach is worth as much as one of the bridge?

Ans. I decline to answer or to make a value on separate things. I am not here to make a reassessment of that bridge. If there is anything in regard to that bridge that you don't like you can lay it before the board and it will act on it.

21. You think the short spans are worth as much as the long spans?

—. I decline to answer.

22. I suppose you are acting under advice?

Ans. No, sir.

23. You just made up your mind as to the value, jumped at a conclusion, and put it on?

26 A. I heard you this morning, and I don't propose to answer any more such questions. I don't propose to assess this township and that bridge twice for the same money.

24. As I told you this morning, I am not bringing any witnesses here to prove anything.

A. If you think the bridge is assessed too high, it is for you to bring witnesses.

25. Your position is that if I had asked these questions this morning you would have answered them, but that now you won't?

A. I don't care to go into details. I might have answered some of these questions this morning. But I answered this morning about as many as I cared to answer.

26. What I wanted to know is how you arrive at your details.

A. There is no use of rehashing that thing; I told you this morning.

27. Have you any idea how many yards there are in that approach?

A. I will ask you if you know how many yards there are.

28. I know how many the experts say there are.

29. Do you know how many pounds of iron there are in the part of the bridge that you assessed?

Ans. No, sir; I had no opportunity of weighing it.

30. You don't know how much is cast and how much wrought?

A. I know there is some wrought and some cast.

31. You don't know how much of it is steel?

A. No, sir; and I doubt whether you do.

32. ——.

Mr. COLE: Mr. Chairman, I hold in my hand a protest against the assessment of the Keokuk and Hamilton Bridge Company's property, and serve a copy on this board.

I also serve you with a notice of appeal.

27 I also have a complaint to make. You'll remember that the assessor stated this morning, and also says this afternoon, that none of the property in the township is assessed at more than one-fourth of its fair cash value, and also that some people in some neighborhoods were favored with a lower percentage of assessment than in other neighborhoods. I will read from the Revised Statutes of Illinois some directions as to how assessments shall be made. (Reads.) I enter complaint that the different properties we have referred to here today have not been assessed in accordance with the provisions of the law.

Mr. PRENTICE: I demand proof that the bridge company's property is assessed at more than ⅓ of its fair cash value.

Mr. COLE: What proof do you want? We have offered proof time and again.

Mr. PRENTICE: We want to know the earning capacity of the bridge.

Mr. COLE: That has nothing to do with the value of it.

Mr. PRENTICE: The earning capacity establishes the value of anything.

Mr. COLE: There are two kinds of assessment against such property. One is the assessment against the tangible property, and that is all you have anything to do with. I would refer you to the special statute on the assessment of bridges. There is no other assessment that you have anything to do with. An assessment against the franchise, the privilege of the bridge, is a matter for the consideration of the State board of equalization.

Adjourned.

28 And also, on July 9th, 1894, objector filed with the county clerk of this county a further list of the lands and asked that the assessment be raised as follows:

CARTHAGE, ILL., *July 9th*, 1894.

To the honorable board of supervisors, Hancock county, Illinois.

GENTLEMEN: On behalf of the Keokuk and Hamilton Bridge Company and as their agent and representative, I hereby enter complaint against the assessment of property and persons, a list of which is hereto attached, in addition to that already complained of before the township board of review, in Montebello township, on July 25th, 1894, and which complaint has been attached to the petition heretofore filed before your honorable body and is marked Exhibit "B," and ask that the assessment against the property complained of in said Exhibit B and heretofore described and the list hereto annexed be revised so that the same shall be made at the fair cash value of the property as required by the statute, the statement of the assessor of Montebello township being that no property in Montebello township has been assessed at more than twenty-five per cent. of its fair cash value, and much of it at only twenty per cent. of its fair cash value, on the first day of May, 1894.

J. H. COLE, *Supt.*

James A. Anderson, lots 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, block 5, Reeves Durkee, Safford & Co.'s addition to Hamilton.

John M. Elder, lot 1, E. ½ lot 2, 11, & 12, bl. 28, Bartlett & Gordon's addition to Hamilton.

C. W. Baldwin, lots 5 & 6, block 28, Bartlett & Gordon's addition to Hamilton.

State Bank of Hamilton, 20 by 48 feet, N. E. corner lot 1,
29 block 18, Bartlett & Gordon's addition to Hamilton.

M. Leroy, lots 5 & 6, block 15, Bartlett and Gordon's addition to Hamilton.

Henry Swigelson, lots 1 & 2, block 16, Bartlett & Gordon's addition to Hamilton.

W. H. Glazebrook, all of lot 1, block 17, except 29½ feet east side, Bartlett & Gordon's addition to Hamilton.

Jackson & Herold, lot 3, block 17, Bartlett & Gordon's addition to Hamilton.

A. L. McArthur, 20 x 90 feet, N. E. corner lots 11 & 12, block 17, Bartlett & Gordon's addition to Hamilton.

W. H. Glazebrook, lots 78 & '9, block 24, Bartlett & Gordon's addition to Hamilton.
H. M. Elder, lots 1 & 2, block 2, Dennis' addition to Hamilton.
Harlow Hosford, N. E. ¼, sec. 2.
William H. Honce, S. ½ N. E. ¼, sec. 9.
John I. Spence, S. ½ S. E. ¼, sec. 9.
Chauncey M. Brandt, S. E. ¼, sec. 10.
William Clark, N. ½ S. E. ¼, sec. 13.
F. M. Herold, N. ½ S.W. ¼, sec. 17.
H. C. Hanson, lot 1, S.W. ¼, sec. 20.
R. W. Alvord, lot 1, E. ½ S.W. ¼, sec. 29.
Samuel Gordon, N. part of lot 2, E. ½ S.W. ¼, sec. 29.
Riverside sanitarium, lot 13 & S. ½ of lot 12, N. E. ¼, sec. 30.

30 5th. Objector's said property is assessed at about four times as much, in proportion to its fair cash value, as any other property in Hancock county.

6th. Said board of supervisors refused to change said assessment in any respect, or to raise the valuation of other property to the ratio objector's said property was assessed; that said action of said board of review and of said board of supervisors was fraudulent and done with a view of compelling objector to pay more than its just proportion of taxation.

7th. The school tax and the city tax of Hamilton are not properly levied, and ought not to be charged upon said property.

Objector therefore prays that judgment be refused; and, as in duty bound, will ever pray, &c.

May 6th, 1895.

G. EDMUNDS,
Attorney for Objector.

Thereupon, by consent of the people and said bridge company, the hearing on said objections was continued until the — day of June, 1895.

Thereupon, afterward, to wit, on June 11th, 1895, the parties, the People, by said Aitchison, collector, and said bridge company, by its said attorney, entered into and filed with said county clerk a stipulation as follows:

In the Matter of the Application of the Collector of Hancock County for Judgment on the Delinquent Tax List.

Made to May term, 1895; to which sundry objections were filed, and the hearing on those objections *were* continued until June 17th, to fix time for hearing thereof.

Now, the collector having discovered that he had left out of the application for judgment certain taxes claimed by him to be due from "the Keokuk & Hamilton Bridge Company," which said company contest, and as it would require a readvertisement and new application for judgment therefor, which could not be made

31 returnable before 1st Monday of August, thereupon it is agreed that to obviate such readvertisement and to bring the

whole matter before the court that the collector may insert in his application for judgment the capital-stock tax for the year 1894 levied by the State board of equalization against said company, the same and with the same effect as if originally it had been inserted there, with the same right of objections by said company as if originally inserted, and that the matter stand continued until the 2nd Monday of August. In the meantime, either party may take such proof as it desires.

ROBERT AITCHISON,
Co. Collector.
G. EDMUNDS,
Attorney for Objector.

Thereupon said Aitchison, as such collector, inserted in said book filed as aforesaid the claims of the people for judgment for capital-stock tax, as now shown on said delinquent list.

Thereupon, afterwards, to wit, on June 13th, 1895, said bridge company, by its said attorney, filed in said matter with said clerk its objections to any judgment on account of said capital-stock tax, as follows:

In the County Court of Hancock County, Illinois.

In the Matter of the Application of the Collector of Hancock County for Judgment on Delinquent Tax List, to May Term, 1895.

Objections by "the Keokuk & Hamilton Bridge Company" to judgment against its bridge and approach.

The original objections filed to said May term covering the application as there made.

The application was amended in June by adding claims for capital-stock tax of 1894, $1,029.90.

This objection is to the proposed judgment against said property for said claimed tax on the capital stock of said company.

32 1st. Because said bridge company is a consolidated corporation of the States of Illinois and Iowa, one-half in each of said States, and its entire business is that of interstate commerce, and any tax thereon is a tax upon such interstate commerce and is without authority of law and void.

2nd. Such claimed capital-stock tax is levied upon the whole capital stock, when only one-half thereof, if any, is assessable in Illinois.

3d. The only tax assessable against said property is upon its tangible property in Illinois.

4th. Said pretended assessment of capital stock is wholly void because not made in the manner required by law nor according to the rules of the State board of equalization.

G. EDMUNDS,
Attorney for the Keokuk & Hamilton Bridge Company.

Thereupon the hearing upon said objections was continued from time to time until the August term of said court, 1895, when, said

cause coming on for hearing, the following proceedings were had, viz:

Proceedings before the Hancock County Court, August 12th, 1895.—Hon. D. E. Mack, County Judge.

STATE OF ILLINOIS, Plaintiff,
vs.
THE KEOKUK & HAMILTON BRIDGE COMPANY, D'f't.

In the matter of the taxes against said bridge company in Montebello township for the year 1894.

Hartzell, Halbower & O. F. Berry for the State.
Geo. Edmunds & J. D. Miller for the bridge Co.

33 *Transcript of Evidence Taken on the Hearing.—K. H. Louis, Reporter.*

Judge EDMUNDS: I desire to say that both sides have been to Pittsburg, Pa., and taken depositions, which have not yet arrived here. We have notice that they are coming, and we want it understood that when they come that they may be read.

By the COURT: Certainly; they will be admitted.

Record tax judgment, sale, redemption, & forfeiture offered.

It is admitted that the book offered in evidence is the tax judgment, sale, redemption, and forfeiture record of Hancock county for the year 1895 on application for judgment for the taxes for 1894.

Plaintiff offers the leaf on which is marked "Filed May 1st, 1895."

E. MCCLURE sworn.

By Mr. BERRY:

Q. You marked this book "filed," &c.?
Ans. Yes, sir.

Plaintiff offers pages 39, 40, 41, 42, 43, 122, 123, 124, and 125 of said book.

Defendant objects to the offering of pages having nothing to do with this case, being pages 124, 125.

COUNSEL FOR PL'FF: We insist on having these pages in the record.

The COURT: I think I shall have to admit it.

To which the defendant excepts.

Defendant also objects to the introduction of anything in that record which is done after the affidavit of the collector on page 122.

Objection is overruled. Defendant excepts.

34 Defendant further objects to the introduction of pages 41, 42, and 43 for the reason that the description of those pages describes two different and distinct pieces of land, giving one valuation to the whole tract.

By the COURT: I think it is better to admit it, and I can sift it

out, and the matter will be determined in the final decision. I will admit the evidence and take it for what it is worth.

Defendant's counsel excepts to the ruling.

Tax Judgment, Sale, Redemption, and Forfeiture Record.

STATE OF ILLINOIS, }
County of Hancock. }

In the County Court of Hancock County, May Term, A. D. 1895.

A list of lands and town lots reported by Robert Aitchison, county collector of the revenue for the year A. D. 1894, in the county of Hancock and State of Illinois, upon which he has been unable to collect the taxes due and charged thereon, and now, on this 6 day of May, 1895, petitions for a judgment and order of sale against said lands and town lots; also a record of the sale, redemption, and forfeiture of said lands and town lots for the taxes, special assessments, interest, cost, and penalty due severally thereon, which were by said court at said term ordered to be sold as the law direct-.

Page 39.

Montebello continued.

The Hancock County Bridge Company, called the Keokuk Bridge Company, called also the Keokuk and Hamilton Bridge Company.

All the lands of the Keokuk and Hamilton Bridge Company situated in Hancock county, Illinois, & lying and being in and on Island No. 4, in the southwest quarter of section thirty (30), in township five (5) north, range eight (8) west, in said county, and extending westwardly into the Mississippi river to the State line between the States of Illinois and Iowa, and more particularly described as follows, viz:

A strip of land eighty feet wide, more or less, the center line of said strip of land commencing at a point in the center of Railroad avenue, in the

(Continued on page 40.)

Page 40.

Montebello continued.

plat of ground known as the Keokuk and Hamilton Ferry and Manufacturing Company's addition to the city of Hamilton, in said county, 707½ ft. south 72 degrees and 40 minutes east of the center of the east end of said bridge, thence running north 72 degrees 40 minutes west to the east end of said bridge; thence, continuing the same course along the center line of said bridge, 1,565 feet to the State line between the States of Illinois and Iowa, including the slopes, walls, embankments, abutments, piers, and bridge structure and improvements thereon.

Keokuk & Hamilton Bridge Co. capital-stock tax.

Sec. 30, twp. 5, ra-g- 8, eq. val. by State b'd, $79,900.00; State tax, $247.69; county tax, $263.67; town tax, $55.93; R. & B. tax, $319.60; Co. int. tax, $151.81; city tax, $719.10; dist school tax, $950.81; total current tax year, $2,708.61; total tax due, $2,708.61; costs, .26; interest after May 1st, $27; amount for which judgment is asked, $2,735.87.

Capital-stock tax, eq. val. by State b'd, $30,080; State tax, $93.25; county tax, $99.26; town tax, $21.06; R. & B., $120.32; Co. int. tax, $57.15; city tax, $270.72; dist. school tax, $357.95; total tax current year, $1,019.71; personal property tax, $1,019.71; total amount tax due, $1,019.71; int. after May 1st, $10.19; amount for which judgment is asked, $1,029.90.

Page 41.

(Montebello continued.)

36 The Hancock County Bridge Company, called the Keokuk Bridge Company, called also the Keokuk & Hamilton Bridge Company.

A piece of ground sixty-six feet wide, extending 33 ft. on each side of the following center line: Commencing at a point 125 ft. north 72 degrees 40 minutes west from the northeast corner of block 41 of the K. & H. F. & M. Co.'s add'n to the town of Hamilton, Hancock county, Illinois, a plat of which is on record in the county and State aforesaid, which N. E. corner of block 41 is one thousand twenty-one and sixty-three hundredths of a foot (1,021.63) north 64 degrees 47 minutes 30 seconds west from the center of the face of the westerly stone abutment of the

(Continued on page 42.)

Page 42.

Montebello continued.

Railroad bridge of the Hamilton or main slough, thence N. 51 degrees 41½ minutes E. 197 feet; thence N. 34 degrees 9 minutes E. 400 feet; thence N. 8 degrees 45 minutes W. 100 feet; thence N. 27 degrees 39 minutes E. 131 feet; thence N. 29 degrees 28 minutes W. 170 feet; thence N. 37 degrees 32 minutes E. 575 feet; thence N. 19 degrees 52 minutes E. 220 feet; thence N. 89 degrees 22 minutes E. 270 feet; thence S. 71 degrees 57 minutes E. 1,150 feet; thence S. 48 degrees 45 minutes E. 275 feet to the west end of the bridge built across what is known as the Hamilton or main slough, and also the said bridge over said slough to the east bank of said slough; also another piece of land on the northwest corner of Front and Main Sts. of the town of Hamilton aforesaid,

Continued on page 43.

Page 43.

(Montebello continued.)

commencing at said corner and extending parallel with the Front street 66 feet, and thence parallel with Main street to the slough bank; thence along the slough bank to the intersection of
37 Main street, and thence along Main street to the place of beginning; also another piece of land, commencing at a point 542 feet N. 72 degrees 40 minutes W. from N. E. corner of block 41 of the addition to the town of Hamilton aforesaid, thence on the same line N. 72 degrees 40 minutes W. 400 feet; thence N. 17 degrees 20 minutes E. 110 feet; thence S. 72 degrees 41 minutes E. 400 ft.; thence S. 17 degrees 20 minutes W. 110 ft. to the place of beginning, all of said lands lying and being in section 31 and perhaps extending into sec. 32, and said strip 66 ft. wide lying and being in Islands No. 2, 10, and 4, in township 5 N., R. 8 W., of the 4th principal meridian.

Sec. 31 & 32, twp. 5, rng. 8, acres 5.60, eq. val. by State b'd, $7,520; State tax, $23.31; county tax, $24.81; town tax, $5.26; R. & B. tax, $30.08; Co. int. tax, $14.29; city tax, $67.68; dist. school tax, $89.49; total tax current year, $254.92; total amount tax due, $254.92; costs, .26; int. after May 1, $2.54; amount for which judgment is asked, $257.72.

Page 122.

STATE OF ILLINOIS, } ss:
County of Hancock, }

I, Robert Aitchison, county treasurer and *ex officio* collector of the said county of Hancock, in the State of Illinois, do hereby give notice that I will apply to the county court in and for said county, at the May term thereof, to be holden in Carthage, in said county, on the first Monday in the month of May, A. D. 1895, being the sixth day of said month and the day fixed by law for the commencement of said term of the county court, for judgment against the foregoing and above described lands and town lots and blocks and parts thereof for the taxes, special assessments, interests, and costs due thereon, as above set forth, and for an order of said county court to sell such lands and town lots and blocks and parts thereof for the satisfaction of said taxes, special assessments, interests, and costs; and I do hereby further give notice that on the third
38 Monday next succeeding the sixth day of May, A. D. 1895, the same being the day fixed by law for the commencement of the May term of said county court, 1895, which Monday will be the twenty-seventh day of May, 1895, all of said lands and town lots and blocks and parts thereof will be exposed to public sale at the court-house, in Carthage, in said county and State, for the amount of the said taxes, special assessments, interests, and costs due thereon.

Said sale will commence at the hour of ten o'clock a. m. of said

day and continue from day to day until all of said lands, lots, and blocks and parts thereof are sold.

Dated Carthage, Ill., April 12th, 1895.

ROBERT AITCHISON,
County Treasurer & ex Officio Collector of Hancock County, Illinois.

STATE OF ILLINOIS, } ss:
County of Hancock, }

I, W. O. Sharp, publisher of the Carthage Gazette, a weekly newspaper published in the city of Carthage, Hancock county, Illinois, do hereby certify that the foregoing list of lands and town lots and blocks and parts thereof, together with a notice of intended application for judgment and order of sale, was published in the Carthage Gazette, a newspaper published weekly in Carthage, in the county of Hancock and State of Illinois, on the 12th day of April, A. D. 1895, being at least 3 weeks prior to the first Monday of May, A. D. 1895, and that the number of copies of said list and notice correspond with the number of copies of said newspaper issued for that day and equal to the entire circulation of said newspaper on that day.

W. O. SHARP,
Publisher of the Carthage Gazette.

Dated at Carthage, Ill., April 13th, 1895.

39 Subscribed and sworn to before me this 13th day of April, 1895.

ELZEY McCLURE,
County Clerk. [SEAL.]

Page 123.

STATE OF ILLINOIS, } ss:
County of Hancock, }

I, Robert Aitchison, collector of the county of Hancock and State of Illinois, do solemnly swear that the foregoing is a true and correct list of the delinquent lands and lots within the county of Hancock upon which I have been unable to collect the taxes and special assessments, interest, and costs and printer's fee (if any), as charged by law, for the year or years herein set forth; that said taxes now remain due and unpaid, as I verily believe.

ROBERT AITCHISON,
County Treasurer & ex Officio Collector of Hancock County, Illinois.

Subscribed to and sworn to before me this 6th day of May, 1895.
ELZEY McCLURE, *Clerk.*

Page 124.

STATE OF ILLINOIS, } ss:
County of Hancock, }

In the County Court, Probate, May Term, A. D. 1895.

At a regular probate term of the county court of said county begun, continued, and held at the court-house, in the city of Car-

thage, in said county and State, on the first Monday in the month of May, in the year of our Lord one thousand eight hundred and ninety-five, the same being the 6th day of May, the following proceedings were had and the record made thereof, viz:

40 Present: Hon. David E. Mack, judge, &c.; William H. Hartzell, State's attorney; Elzey McClure, county clerk; Charles Wieseman, sheriff; Robert Aitchison, county treasurer and *ex officio* collector.

THE PEOPLE OF THE STATE OF ILLINOIS *ex Rel.* of ROBERT AITCHISON, County Treasurer and *ex Officio* County Collector of Hancock County, State of Illinois,

vs.

CERTAIN LANDS AND TOWN LOTS AND BLOCKS AND PARTS THEREOF Delinquent for Taxes, Special Assessments, Interest, Penalties, and Costs Due and Unpaid Thereon for the Year 1894 and Former Years, as Set forth in the Foregoing Delinquent List Heretofore Filed by said Collector in the Office of the Clerk of this Court.

MONDAY, *May 6th*, 1895.

And now, on the 6th day of May, 1895, comes Robert Aitchison, county treasurer of Hancock county, Illinois, and *ex officio* collector therein, by William H. Hartzell, State's attorney, and in open court enters herein his motion for judgment — the tract and tracts and lots and blocks of land and parts of lands and lots and blocks in favor of the *the* People of the State of Illinois for the sums annexed to each respectively, being the amount of taxes, special assessments, interest, penalties, and costs due severally thereon as stated in said application.

And comes also the Toledo, Peoria & Western Railway Company, by Manier, Miller & Williams & Stevens, Horton and Abbott, and files herein their objections to the rendition of judgment against the property of said railway company.

41 And comes also the Keokuk & Hamilton Bridge Company, by its attorney, G. Edmunds, and files herein its objections to judgment being rendered against its property.

And comes also William H. Govert and —— Caldwall, by their attorney, G. Edmunds, and files objections to the rendition of judgment against certain property owned by them set forth in their objections, and by agreement of counsel it is ordered by the court that each and all of the foregoing objections be continued until the June term of this court.

And comes also the Chicago, Burlington & Quincy Railroad Company and files herein its objections to judgment being rendered against the property of said company for taxes amounting to $37.64, city tax of the city of Carthage, and $5.98, district road tax of Carthage township, and $18.43, tax of school district No. 9, in St. Albans township, in said county, and $24.22, road and bridge tax in St. Albans township.

And the court being now sufficiently advised in the premises, it

is ordered and adjudged by the court that said objections of the Chicago, Burlington & Quincy Railroad Company be sustained, and judgment is refused so far as pertain to the amount claimed in said application against the property of said railroad com-
Page 125. pany, and the clerk of this court is hereby directed to enter opposite said tax, interest, and cost, in said application herein against said railroad company, "Judgment refused;" and no further objections herein having been filed, and the court having examined said list and the application herein, and having also examined the copy of the "Carthage Gazeete," the newspaper in which said list was published, and to which the publisher's certificate under oath is attached, and now being fully advised in the premises, and whereas due notice has been given of the intended application of judgment against said lands and lots
42 (except so far as relates to the tax, interest, and costs against the property of the Chicago, Burlington and Quincy Railroad Company, in which case judgment is refused as aforesaid, and also as to the objections of the Toledo, Peoria and Western Railway Company, William H. Govert and one Caldwell and the Keokuk & Hamilton Bridge Company, which have been continued as above stated for further hearing), and no sufficient cause shown or defence having been made why judgment should not be entered against said lands and lots for taxes, special assessments, interest, penalties, and costs due and unpaid thereon for the year or years herein set forth, as is shown in and by said application, therefore it is considered, ordered, and adjudged by the court that judgment be, and it is hereby, entered against each and all of the aforesaid tract and tracts & lots of land and parts of lots and tracts set forth and described in said application herein, upon which the said taxes, special assessments, interest, penalties, and costs are therein reported due and unpaid (and excepting the property of said Chicago, Burlington & Quincy Railroad Company where judgment is refused as aforesaid, and also excepting as to the objections now on file and the hearing of which has been continued to the June term of this court of the Toledo, Peoria & Western Railway Company and the Keokuk & Hamilton Bridge Company and William H. Govert and Caldwell) in favor of the People of the State of Illinois for the sum annexed to each, being the amount of taxes, special assessments, interest, penalties, and costs due severally thereon.

And it is ordered by the court that the said several tracts or lots of land or so much of each of them as shall be sufficient to satisfy the amount of the taxes, special assessments, interests, penalties, and costs annexed to them severally be sold as the law directs.

DAVID E. MACK,
County Judge.

43 The State rests.

It is now agreed that the People may bring in matter in rebuttal (for the convenience of witnesses), but this will not preclude the People from bringing in other evidence-in-chief at any future time.

The defendant called W. A. STEINBERGER, who was sworn for defence:

EDMUNDS: Where do you reside?
Ans. Augusta township.
2. Did you hold any official position in that township in 1894?
A. Yes, sir.
3. What was it?
Ans. Assessor.
4. Tell the court at what rate in proportion to its fair cash value you assessed the property in that township.

Objection for the reason that the law says the assessor shall assess the property at its fair cash value; that being true, no assessor has a right to swear so that his testimony will impeach himself—that is, the assessor is not competent to impeach his sworn return; also because it is immaterial what other property in the township is assessed at, the question only being how was the property of the Keokuk & Hamilton Bridge Company assessed.

The COURT: My view is that if you do not go too far out of the record, the best way is to admit the evidence. The evidence is admitted. People except.

A. At about one-third.
5. Over or under one-third?

Same objection. Same ruling. Same exception.

A. My rule was to assess the property; ⅓ was about the guage.
6. You tried to get one-third of its fair cash value?
A. Yes, sir.

Cross-examination:

(None.)

44 The People then called as rebutting testimony the following:

SAMUEL BALL, being sworn, testified:

O. F. BERRY: Where do you reside?
Ans. St. Louis, Mo.
2. How long have you resided there?
A. Ever since 1837, with the exception of probably 6 years.
3. What was your business?
Ans. Steamboat captain and pilot.
4. When did you begin your business as such?
A. I left St. Louis in the spring of 1837; 10th of April, '37.
5. On what river did you begin work?
A. On the Mississippi, between St. Louis, Galena, and Dubuque. That was then considered the head of navigation.
6. From the time you begun work, how continually did you go up and down the Mississippi river?
A. For about 15 year- I made two trips a week in the Keokuk trade—that is, while I was in the packet trade. When running to

St. Paul we usually made a trip in about 10 to 12 days; to Galena and Dubuque, a little over a week.

7. Beginning with 1837, how long did you continue to run as captain or pilot up and down the river?

A. I left the Mississippi permanently 3 years ago and went to the Missouri. I made several trips up the Mississippi after that, probably 20 trips, but not regularly.

8. Do you know where the city of Keokuk, Iowa, is located?

A. I ought to know pretty well. I think I built the first house that a white man built in it.

9. Have you been acquainted with it ever since?

A. Yes, sir; I lived in the place two years.

10. What city or town is opposite Keokuk?

Ans. Hamilton.

11. Is there any bridge between Keokuk and Hamilton?

Ans. Yes.

12. About when was that bridge built?

45 —. Really I can't go back to fixing dates, for I left Keokuk about the time that bridge was built, I think.

13. State whether or not you are acquainted with the main navigable channel of the Mississippi river, opposite Keokuk.

Objection by defendant as incompetent and immaterial.

Objection overruled. Defendant excepts.

Defendant makes the further objection that there will be an effort during this trial to show the difference between the channel of the river and the channel that steamboats sometimes follow, and the question put to the witness does not bring to the mind of the court the real issues and what should be brought out to enable the court to determine the matter.

The COURT: I can't say at this stage of the trial what the distinction is; therefore I must admit the evidence.

Defendant excepts.

A. Yes, sir; I am conversant with the channel and have been ever since I commenced boating, notwithstanding I withdrew from the river; it was not permanent. I made trips almost every year. I am conversant with the channel from the chain below Keokuk.

14. Are you acquainted with the main navigable channel of the Mississippi river opposite Keokuk?

Objection by defendant as calling for opinion and conclusion of the witness. Objection overruled. D'f't excepts.

A. I think I know almost exactly where every mark is as well as any one could who would run up there a thousand or perhaps 2,000 times. I think I know where the main channel is to within 20, or I might say even 10, feet.

Defendant moves to strike out all that latter part of last answer as not responsive. Motion sustained.

15. Tell the court where the middle of that main channel, the

middle of the main navigable channel, is located with reference to the Keokuk & Hamilton bridge.

Same objection by d'f't. Overruled. D'f't excepts.

A. I stopped yesterday and looked at marks that I run to
46 for years, and the middle is just outside of the first pier, probably 8 or 10 feet east of the pier.

16. About how far is it from the Iowa shore?

A. I presume that whole bridge is about 2,000 feet. The channel never was to exceed 400 to 500 feet wide, and that would leave it about 1,600 feet to the Illinois shore—that is, from the extreme east part of the channel.

17. How far east of the pivot pier is the channel?

A. I think about 30 feet this side of the draw, or 35 feet.

18. Give your best judgment as to the distance from the east end of the draw to the middle of the channel.

A. I have stated, I think, about 35 feet. Haven't you a draft of the bridge here?

(Mr. BERRY: Yes.)

19. Have you ever examined this plat?

A. Yes; I looked it over when they came to take my deposition at Ft. Madison. As I understand it, this is the first span; this is the pivot pier, and this is the first span east of the pivot pier, right here (showing on the plat).

20. At what figures?

Ans. 82; 200 feet from the pivot pier to where I think the main channel is.

21. 200 feet east?

Ans. According to my judgment.

22. If the plat presented is correct, you would say that the middle of the main channel is about 200 feet east of the pivot pier?

Ans. It passes under the bridge here. (Shows on plat.) I had my attention called to the mark, away over here in Illinois, on the bridge as being the center of the main channel.

23. Captain, is the place you have described the place where the boats pass up and down the river?

Objection by defendant as leading and calling for conclusion.

24. State whether or not the place in the river described by you is the place where the boats went up and down in carrying the commerce of the county in the Mississippi river opposite Keokuk.

47 A. Yes, sir; that is where it was prior to the erection of the bridge. With the erection of the bridge the channel has turned to one side of where it was.

25. Which way is the channel now?

A. It is west of where it was, the main channel. It then laid to the east of where the boats now run.

26. Is the place described by you as the middle of the main channel, the main navigable channel of the river, the place where the

boats went up and down the river prior to the building of this bridge?

Objection as leading and calling for a conclusion. Objection overruled. Defendant excepts.

A. Yes, sir; it is.

27. Describe to the court, as best you can, the condition of the bottom of the river along there—that is, for a short distance below and a short distance above Keokuk.

A. It is uneven, rocky bottom. There are deep holes, but in the main channel of the river, in low water, I never struck less than 10 feet of water, smooth channel for about 400 feet, although we were liable to hit a rock anywhere. The channel started out from
48 below the landing at Keokuk, and went out the distance I have described as the center, and kept a curve up to the chain. There is where the channel is, and up there is where the chain is, and there is where it will be until an earthquake turns the bed of the river all up.

Defendant moves to strike the answer from the record as not responsive to the question. Overruled. Defendant excepts.

28. State to the court whether or not there was another channel that boats could pass up and down the Mississippi river at an ordinary stage of water, except the one you have described.

A. No, sir; there has never been any other channel on the rapids from that chain down, except the main channel, that boats could run in at anything like low water. There are pockets that boats can get into, but after they get into them they can get neither up nor down. There are pockets, especially below the bridge, where you can go in there with a boat, but you can go neither up nor down. In low water I have speared over the whole surface there, and there was not over 18 inches of water on that smooth rock. I have speared clear up to the chain of rocks, and there is not a foot of ground there that I have not speared over.

Cross-examination:

EDMUNDS: Where were you piloting in 1845?

A. I was running in three trades on the Mississippi, the Missouri, and the Illinois rivers—just where the business led.

2. What business was you in?

Ans. In 1845?

3. Yes, and 1846.

Ans. I think I had the Mary Blaine part of the time, the Monongehala, the Two Doves, and about a dozen other boats during those years.

4. Were you in the regular or transient trade?

A. You may call it what you please. I never entered into a combination. I run my own boats.

5. You didn't run for the Keokuk Packet Company?

A. When I had no boat of my own I always had to take one of another man. I run the Petrel and Henry Clay and the Minneapolis.

6. What years did you run in the St. Paul trade?

A. From 1840 to 1850.

7. You ran there between 1840 and 1850?

Ans. Yes, sir.

8. Did you own a boat at that time?

A. Almost every boat that I put my foot on except a company's boat.

9. What company were you employed by?

Ans. The Northern line.

10. What year were you employed by the Northern Line Company?

A. When it comes to dates I can't say, but I was running their boats between 1850 and 1855 and between 1860 and 1865.

11. You say you have been over all that flat rock east of Keokuk?

A. Yes, sir.

12. Did you ever land a boat at Hamilton?

A. I have landed a skiff there.

13. Did you ever land a steamboat there?

Ans. No, sir.

14. Did you ever try to?

Ans. No, sir.

15. Don't you know that for years before the construction of this bridge steamboats were in the habit of landing there?

A. I never saw a steamboat land there in my life. I have been there for years and never saw a steamboat there, except ferry-boats.

16. If steamboats did land there, they must have found some water to get there?

Ans. If they did, they found good water; but take it down to a medium stage of water, and there is no boat, hardly a soft shell turtle, could get to where the bridge is.

17. How much water would there be with a three-foot stage of water on the rapids—how much on the flat rock that you talk of?

A. There could not be over 18 inches; maybe a foot.

18. With a 3-foot stage on the rapids?

Ans. Yes, sir.

19. How wide did you say this deep channel was on the Iowa side?

—. I never said there was any channel there. You are mistaken.

20. Where did you say it was?

Ans. I said the channel ran on the Iowa side—oh, excuse me, sir; I take it back; I thought you said the Illinois side.

21. How wide do you say the channel which you say was on the Iowa side was?

Ans. I judge between 400 and 500 feet, as near as I can estimate it.

22. What is the shape of the rock as it shelves out from the Iowa side? Is it sloping or does it come down perpendicular?

A. It is sloping.

23. From high water to low water what would be the distance? Suppose this—here is a street in Keokuk (shows plat) and down here some place is the river. Now, about how much distance on this slope would be the difference between high and low water?

A. I think it is between 100 and 150 feet of slope between high and low water.

24. Did you ever hear of Dominion rock?

A. Yes, sir; and I have dived off it.

25. What year did you dive off it?

A. Along in the '40's. Possibly '48.

26. Was there ever a year that Dominion rock was out of the water except in 1846?

Ans. I did not see it then.

27. Where was your boat in 1846?

Ans. I was boating somewhere up here. I think I was boating to Rock island on the Bridgewater.

28. You were running over the rapids?

A. Yes, sir; and in '47 and '48.

29. What sort of boats were running over the rapids in 1846? Take July, August, and September, 1846.

A. You are asking pretty hard questions, Judge; asking for the names of boats that run in those days. It is impossible for me to pick out and name the boats I run. I have owned and run 75 steamboats, and a man would have to have a pretty good memory to go back that far.

30. What boats ran in that trade over the rapids during July, August, and September, 1846? You either know or you don't know.

51 A. My memory does not serve me exactly that far, and when I answer I know just exactly what I am answering, and no lawyer can make me answer what I don't know.

31. How many times in July, August, or September, 1846, did you take a steamboat over those rapids?

A. You are asking for more than I can tell. Could you expect any man to do that? You must remember that you are about as whiteheaded as I am.

32. Do you remember the boat the Bonaccord?

A. Yes, sir.

33. Do you remember what year she was there?

A. I think it was about '46 or '47. I was running the Monongahala then.

34. Don't you know that in July, August, or September, 1846, there was not another boat besides that one that could go over the rapids?

Ans. No, sir; I don't know any such thing. That was in 1848. The river was lower then than it has ever been since or than it ever was before. You have got the wrong sow by the ear, Judge. Captain Campbell, of Davenport, wrote out a history of that time. My memory is bad enough, but I can catch you on a few of these points.

35. You never attempted to land a steamboat at any part of Hamilton?

A. No, sir.

36. Do you know that at one time the Wabash Railroad Company had a depot on the east bank of the Mississippi river opposite Keokuk?

Objection as incompetent.

A. It didn't interest me, and I didn't know anything about it.

37. You hadn't time to look at the Wabash depot?

A. No, sir; I knew I could not get there.

38. Did you know the ferry-boat the Gate City?

A. No, sir; I knew the ferry-boats at St. Louis, but not at Keokuk.

39. Did you know the Hamilton Belle, running between Keokuk and Hamilton?

Ans. No, sir; they didn't interest me at all.

40. Do you know how much water they drew?

52 Objection as incompetent.

A. No, sir; I don't know whether they drew a ton or a foot.

41. In 1848, if that was the year of the low water, on which side of Dominion rock did you run in going to Keokuk from St. Louis?

A. I run on the east side of it. I have run on both sides. There was water enough on both sides.

42. How far outside did you run for the purpose of getting the nose of the boat into the bank above Dominion rock?

A. Not very far; I had to make a short cut.

43. Those were single-engine boats?

Ans. Yes, sir.

44. Don't you know that the deepest water in the vicinity of that bridge is over 300 feet east of the draw?

A. I see it marked there on the plat, but neither you nor any one else can get a good, correct sounding on the rocks. I have put a pole down to sound and it would drop off into 10 feet of water. It is an unever, irregular bottom, and I would pay no more attention to such soundings, except to get the general depth of the water, than I would to what a man in the moon might say.

45. Take this flat rock east of Keokuk, between that and Hamilton, was it not full of depressions? Below the lower chain, was it not full of little holes?

A. Yes, sir; it is full of holes and openings, and of course, as the biggest one of these holes was right below the bridge, there is where the deepest water is.

46. Was there ever any hillocks that you ran into in this level bottom, or was the differences you found depressions instead of elevations?

A. I never ran over it except with a skiff.

47. You never ran into any hillocks, did you?

A. I had a very strong reflector that I could see a minnow on the bottom in 30 inches of water, and, of course, could see the depressions.

48. What were you running over those places for?

A. For things you like to eat—fish.

53 49. You wasn't hunting a channel?

A. No, sir; there was no channel there to hunt. I have told you where the channel was, and I would not go to hunt it where I knew there was none.

50. Don't you know that there is as deep water next to the east abutment as there is to Dominion rock?

A. Suppose there is, how can you get up or down to it? There is a deep pocket there, but you can't get up or down.

51. Is not the water as deep there as it is at Dominion rock?

A. No, sir; it is not. Mason ran a ferry-boat across there. She drew four feet of water.

52. What boat was it?

A. I can't tell you. He came to me and asked me if he could get across the river, and I told him if his boat did not draw more than four feet he could; if it drew more than that, he could not.

Defendant moves to strike out last part of answer as not responsive. Motion sustained. Plaintiff excepts.

53. How much variance is there between the east and west abutment of that bridge—how much difference in the level across it?

A. I should say it would vary over four feet six inches. Sometimes it would be more and sometimes less, just as you happened to strike a rock between them.

54. Have you sounded above or below that bridge clear across the river?

A. No, sir.

55. Did you ever sound from Keokuk up to the west end of the dike that runs out from Main street, in Hamilton, now partly washed away?

A. No, sir.

56. Do you reccol-ect of there being a warehouse up near the west end of this dump that runs out into the river?

Objection as not cross-examination.

By the COURT: It is not competent unless it is to lead to something else.

54 57. Do you recollect such a warehouse?

A. Yes, sir; and I recollect what I said about it at the time.

58. If steamboats went to that warehouse in any ordinary stage of water——

Ans. (Interrupting.) *A.* They never did it. Boats can't go over dry land. A soft-shell turtle can hardly go over that part of the river, much less steamboats.

59. What is your age, Captain?

A. 80, the 29th of next month.

Redirect:

1. Just describe what you have referred to as a pocket that runs across the river there.

A. That is a term applied by steamboat men to deep holes that extend from the channel to either side of the river. When we get a boat into them we cannot go either up or down.

2. If there was a pocket from the channel across the river eastward toward the city of Hamilton, it would not have anything to do with the channel up and down the river?

A. No, sir; they are not connected. You have to come out the way you went in.

Witness excused.

ROBERT FERRIS, sworn for People, testified:

Mr. BERRY: Where do you reside?

A. Farmington, Iowa.

2. How long have you resided there?

A. About 42 years.

3. What is your business or profession?

A. Steamboating.

4. When did you begin steamboating?

A. Here, in 1853.

5. On what river?

A. The Mississippi.

6. Where were your runs?

A. A good deal about Keokuk and the rapids.

7. How long were you on the rapids?

A. 12 or 13 years, as special pilot.

8. What years?

A. I commenced as special pilot in 1846.

9. What were your duties?

55 A. I was captain and pilot. Almost always I was on a small boat, and then I was captain and pilot both.

10. Were you running up and down above and below Keokuk?

A. Not so far when I was special pilot. I was on the rapids from Montrose to Keokuk.

11. Are you acquainted with the city of Keokuk?

A. Yes, sir.

12. What city is opposite it in Illinois?

A. Hamilton.

13. Is there any bridge across the river between Keokuk and Hamilton?

A. Yes, sir.

14. What is that bridge known as, what name?

A. The Keokuk & Hamilton bridge, I believe.

15. Do you remember when it was built?

A. Yes, sir; I saw it every day.

16. Are you acquainted with the navigable channel of the Mississippi river at that point?

A. Yes, sir.

17. Where is the navigable channel of the Mississippi river between Keokuk and Hamilton passing under the Keokuk and Hamilton bridge?

Objection as immaterial where the navigable channel is.
Objection overruled. Defendant excepts.

A. The west edge of the channel is on the east side of the pivot pier. That is about the west edge of the channel.

18. How far is the middle of the main navigable channel from the Iowa side at low-water mark?

Same objection. Same ruling. Defendant excepts.

A. About 500 feet.

19. About how far is the middle of the main navigable channel east of the pivot pier?

Same objection, ruling, and exception.

A. I think it is very close to the east side of the first pier.

20. Is that the channel usually followed by pilots in passing up and down the river?

Same objection, ruling, and exception.

56 A. Yes, sir.

21. Is the middle of the main navigable channel the only course used by steamboats in passing up and down the river in carrying the commerce of the country?

Objection as leading and incompetent. Overruled. D'f't excepts.

22. Where did the steamboat in passing up and down the Mississippi river pass in relation to the pivot pier of the bridge?

A. On the east side of it.

23. How far?

A. About where the first pier is; that is about where they would run.

24. Is the main channel the same as it was prior to the building of the bridge?

A. Yes, sir—no, sir.

25. Is there now an artificial channel?

A. Yes; on the west side.

26. West of where the natural channel was?

A. Yes, sir.

27. About when was it made and what caused it?

—. About '70 and '71.

28. About the time of the building of this bridge?

A. Afterwards.

29. Was there any other or is there any other channel except the one you have named going up and down the Mississippi river in carrying the commerce of the country?

A. No, sir; there is no other channel.

30. Is there any pocket in there? If so, describe it.

A. I cannot describe it, as the bottom of the river is full of deep places.

31. If there was a deep pocket running out from the main channel eastward, would that have anything to do with the channel?

A. No, sir.

32. If you went into one of those pockets, what would you have to do when you got to the end of it?

A. I would have to go back the same way I went in.

By the COURT: I understand you to say that the natural channel is where, at the first pier east of the pivot pier?

57 A. The pivot pier is on the west side. The deep water comes up to the edge of it. It is straight with Dominion rock.

Cross-examination:

EDMUNDS: Where was Dominion rock as compared with the present pivot pier?

A. Right in a straight line.

2. Which way?

A. A straight line north.

3. About how far from the pivot pier?

A. Dominion rock?

4. Yes.

A. Have you a plat? (Witness shown plat.) It is here, right alongside the breakwater.

5. North of the pivot pier and alongside the breakwater?

A. It is at the end of the breakwater.

6. How far north of the pivot pier?

A. I never measured it.

7. About how far?

A. The pivot pier is in the center of the draw, and they claim it is four hundred feet wide.

8. The pivot pier is in the center of the draw?

A. Yes, sir.

9. How far north of the pivot pier is Dominion rock?

A. Down right along the breakwater, at the north end of the pivot pier; east of the pivot pier, but towards its north side.

10. Did you ever, or how long were you connected with steamboating on the Mississippi?

A. 40 or 41 years.

11. What branch of steamboating were you connected with?

A. Captain and pilot.

12. Where?

A. On the rapids.

13. Were you known as a rapids pilot?

A. Yes, sir.

14. Your business was to take boats and rafts over the rapids?

A. No; only rafts.

15. That occupation was only in low water?

A. High and low water; all summer. I was hired by the season.

16. Did you ever land a boat at Hamilton?
A. Yes, sir.
17. Where?
A. At the head of the slough for the saw-mill.
18. That was in high water?
A. Yes, sir.
19. Did you ever have occasion in medium or low water to land a boat at Hamilton?
A. No, sir; could not land at Hamilton.
58 20. Did you ever attempt to do that—land a boat at Hamilton during a medium or low stage of water?
A. No, sir.
21. Did you know a ferry-boat there called the Gate City?
A. Yes.
22. Did you know the ferry called the Hamilton Belle?
A. Yes.
23. Did you know the draft of those boats?
A. No, sir. 24. Not exactly, but about 2 feet, I judge.
24. Wasn't they about four-foot boats?
A. No, sir.
25. Over three feet?
A. No, sir; you might load them down to three feet. It is not when she is loaded you tell what draft she is; it is when she is light. When she is loaded she might be any draft.
26. Have you ever sounded from what you call the steamboat channel eastward to the Illinois shore?
A. No, sir.
27. Never went over there with a view to determine the depth of the water?
A. I sent over there and dumped dump-boats when working for the Government.
28. Where did you do that?
A. Any place below the bridge.
29. Above the bridge and between Keokuk and Hamilton, did you ever sound over from what you say was the main channel from the Iowa to the Illinois shore?
A. No; I could see what it was without sounding it.

Defendant moves to strike out last clause as not responsive.
Motion sustained.

30. Did you ever pilot any of the packets of the Keokuk line?
A. Yes, sir; I guess I have taken all of them over the rapids.
31. Could they go over in low water?
A. No, sir.
32. If you ever took them over it was in high water of big boating stage?
A. I could tell by the stage of the water if they could go.
33. You never landed one of those boats at Hamilton?
A. No.
34. Did you ever know of one of them landing at Hamilton?
A. I don't recollect of it.

35. Did you know a boat called the Cricket?

A. Yes, sir.

36. Did you know that in 1865, '6, or '7, even, somewhere along there, that boat was in the habit of taking large loads of stone
59 and delivering them to the railroad company?

A. Yes, sir.

37. Do you know how much that boat drew when loaded?

A. 15 or 18 inches, but it was not loaded at all. It was a lighter; it drew 15 to 18 inches.

38. You know that those boats came straight down over the rapids and went to the landing?

A. No; they ran the channel close.

39. What channel?

A. The main channel of the river.

40. When they left the rapids—got below the lower chain—where did they run?

A. Through the draw.

41. There wasn't any draw there, you know that; that bridge was built in 1870 or '71.

A. Yes, sir.

42. When was it finished?

A. In 1871.

43. Was it built before that?

A. It was commenced.

44. When was it commenced?

A. Two or three years before that.

45. In 1865 there was no bridge there?

A. No, sir.

46. Nor in 1866 or '67?

A. No, sir.

47. Then this Cricket didn't bring her loads down through the draw and take them over that way, did she?

A. She brought them down the channel. If her pilot had started her across until he got below where the draw now is he could have made it.

48. They followed the channel and run up?

A. Yes, sir.

49. If steamboats in an ordinary stage of water running in the St. Louis and Keokuk trade were in the habit of landing at the Wabash depot, which was about the east end of the present bridge, how could they get there in 3 or 4 feet of water?

A. They didn't go there. I was on the rapids.

50. Do you recollect a warehouse being up at the west end of this road running out from Hamilton towards the river at any time?

A. They had a shed there and tried to make a landing, but boats could not get in there.

51. What kind of a shed?

A. A mere shed.

52. Wasn't it a frame warehouse?

A. It was a shed.

53. What do you call a shed?

A. A pitched roof, but no sides.
60 54. There was no siding?
A. No, sir.
55. Only a pitched roof?
A. It had a roof pitched one way.
56. That was the extent of the warehouse?
A. Yes, sir.
57. When was that?

Objection as not bearing on the issues.
The COURT: I don't see that it leads to anything.

A. It was about '65 or '66. It was before 1870.
58. Was you ever over at that point before this road was built out from Hamilton?
A. Yes, sir; in high water.
59. Whereabouts?
A. I could hardly tell, as there have been many changes. They have run the dike out so that it has changed the whole river there.
60. Caused it to fill with sand bars?
A. Yes, sir.
61. And made quite a number of acres of land by the sand being thrown in from the river by this eddy?
A. Yes, sir; it has filled it up.
62. Prior to the time that dike was built wasn't there a deep channel from below the rapids up into this pool immediately below the lower chain?
A. No, sir.

Objection to the question as incompetent. Objection overruled. Plaintiff excepts.

63. What would be the necessary effect of constructing this dike out from Hamilton and the cutting of the two sloughs?

Objection as immaterial and not cross-examination. Objection sustained. Defendant excepts.

64. Describe to the court your idea of the river channel.
A. It is a depression in the bottom of the river; deeper water than any other place.
65. At what point in the Des Moines rapids is the channel that was ordinarily followed by steamboats prior to the construction of the Government canal?
A. I could not explain that to you so that you would understand it or any one else. I would have to take you there and show it to you.
66. At what point east and west? Here is the river (shows plat), and at what point in relation to the two banks of the river
61 was that channel that steamboats were in the habit of following in entering the lower chain?
A. The channel curved about the shape of the shore, and that channel is about 400 feet wide. It was about 500 feet from the Iowa

shore and keeps about the distance until it gets up about to the spring chain; then the channel gets narrower.

67. Spring chain. Is that the lower chain?

A. Yes, sir.

68. What is the distance between the Keokuk shore and the Illinois shore—that is, where that channel was cut through the chain?

A. It was about 500 feet from the Iowa shore.

70. And about how far from the Illinois shore?

Mr. BERRY: If the bridge is about 2,100 feet long——

(WITNESS:) The river is wider up there than down at the bridge.

71. Is it not true that when the boats left Keokuk they bore off toward the Illinois shore, going north until they struck this point, where they went into this chain?

A. No, sir; they ran just as I told you.

72. Hugged around the bank?

A. No, sir; about 500 feet; about the shape of the canal wall.

73. Is the passage for steamboats that is ordinarially traveled, and has been ever since your time, going up and coming down these rapids immediately east of the canal wall or is it about midway between that and the Illinois shore?

A. When we get into this first slope we commence working to the Illinois shore. We work in from Montebello.

74. There is a pool below the lower chain that continues to Montebello, is there not?

Objection as immaterial.

75. I ask if immediately below the lower chain there is not a pool that extends to Montebello.

A. No, sir; nothing but the channel.

76. How wide is it usually?

A. About 100 feet where the Government made it; usually about 80 feet.

77. You say the crossing of that lower chain is where?

62 A. I say as you get over the chain, then you commence working to the Illinois shore, towards Montebello.

78. About how wide is the canal up there?

A. It is about 400 feet wide, dump and all.

79. Including the banks?

A. Yes, sir; about that. I never measured it.

80. Including the dump of the bank?

A. Yes, sir.

81. How far is it from the bridge to this chain where they cross it, the lower chain?

A. About 400 yards; maybe a little more than that. I never measured it, but I judge about that.

82. How far above the lower end of the canal is it?

A. It is about 700 feet from the end of the canal wall, from the upper end of the breakwater.

83. Take 700 feet out of the 400 yards, then you- idea would be

that it would only be about 400 or 500 feet from the lower end of the canal up to the chain?

A. No, sir; about 400 yards.

84. 400 yards would be 1,200 feet?

A. Yes, sir.

85. Take 700 feet out of that only leaves about 500, don't it?

A. Yes, sir; that is so.

86. In your experience did you ever see boats go up and down, before the construction of that bridge, without stopping at either Keokuk or Hamilton?

A. I might; I don't remember; if they didn't have anything to land for; I suppose so.

87. Where is it you say the boats run?

A. In high water they would go up the middle of the river.

88. In ordinary water where?

A. It depends on the stage of the water.

89. Suppose the boat drew 4 feet and more, there would have to be a pretty good stage of water?

A. There would have to be 6 feet on the marks.

90. What marks?

A. The guage to tell the stage of water.

91. A guage put up by pilots?

A. Yes, sir.

92. You kept one at Montrose and one at Keokuk?

A. Yes, sir; we used to have them; every pilot has a mark of his own.

63 93. You ran to the different courses for the purpose of following what is known to the pilots as channels?

A. When the water is down you have to run the channel.

94. You run where there is water?

A. Yes, sir.

95. When there is a known channel it has to be followed?

A. When the river is so low that he has to go there.

96. Did you ever examine to see if there was another channel?

A. No, sir; when we get to hitting rocks, then the thing is to keep away from them, and that is one of the ways of learning where the channel is.

97. Do you know the length of this bridge?

A. No, sir; never measured it.

98. Do you know how wide the river is?

A. No, sir.

99. Do you know how wide it was, open water, before the bridge was built?

A. No, and I don't think many do.

100. Do you know what the width of the river is at the lower chain?

A. No, sir.

101. Is it wider or narrower than it is at the bridge?

A. Wider.

102. Because the dikes have cut off a part of it?

A. Yes, sir.

103. Before the dikes were put there, what about the width?
A. I don't know; there was a pocket at the head of the island and a wide place in the river; the widest place, I think.
104. You never piloted either of those ferry-boats there?
A. No, sir.
105. Never had anything to do with piloting a boat across the river at the time the bridge was knocked out by the War Eagle?
A. No, sir; I was working for the Government then.
106. You had nothing to do with that?
A. No, sir; I was stationed at the upper end of the canal.

Redirect:

—. You were asked if you ever sounded from the channel to the Iowa shore; did you ever?
A. No, sir.
64 2. How do the captains and pilots find out about the bottom of the river?
A. They find out a good deal by sight and by sounding it.
3. Why didn't you run over to Hamilton?
A. My judgment was, from what I could see, there was not much depth of water.
4. Did you have to sound it to find out?
A. No, sir.
5. Do you know that at low stages a boat could not run there?
A. Yes, sir.
6. There was no occasion for sounding?
A. No, sir.
7. You were asked why in taking a boat below where the bridge is, why it was you went down there; why was it?
A. Because there is a stream there, a sort of eddy, that makes it easier to round out. If you try to turn in the swift water, it would turn the boat around.
8. Is there any pocket down there in that place you speak of?
A. I never could find any pocket down there.

Witness excused.

SAMUEL SPEAKE, for People, being sworn, testified:

Mr. BERRY: Where do you live?
A. Montrose, Iowa.
2. How long have you lived there?
A. Since March, 1851, except three years in Nauvoo.
3. What is your business?
A. Rapids pilot.
4. On the river?
A. The Mississippi.
5. How long have you been a pilot?
A. Since 1858.
6. You ran from what point to what point?
A. Montrose to Keokuk.
7. How frequently have you run that route during those years?

A. A great many times; made two trips a day for a long time.
8. You know where the city of Keokuk is?
A. Yes, sir.
9. What city is opposite it in Illinois?
A. Hamilton.
10. Is there any bridge across the Mississippi there?
A. Yes.
11. Did you run on the Mississippi river prior to the building of this bridge?
65 A. Yes, sir.
12. And you have run it since?
A. Yes, sir.
13. Are you acquainted with the main navigable channel of the Mississippi river between Montrose and Keokuk?
A. Yes, sir.
14. Tell the court where the main navigable channel of the river was under that bridge prior to the building of the bridge.

Objection by defendant as calling for conclusion and opinion of the witness. Overruled. D'f't excepts.

A. The only channel is about, I suppose, 30 feet outside of the little pier to the left.
15. About how far from the Iowa shore at ordinary water mark?
A. I suppose about 500 feet.
16. Do you know how long that bridge is?
A. No, sir.
17. If the bridge is between 2,000 and 2,100 feet long, how much of the bridge, in your judgment, would be west of the channel?

Objection as calling for conclusion of witness. Objection overruled. Def't excepts.
Question withdrawn.

18. Tell the court whether there was any other navigable channel up and down the Mississippi river except the one described by you.
A. None that I know of.
19. How do pilots find out and determine where the navigable channel is?
A. They go and run by the draft of the water.
20. Did you ever go and make a sounding towards the Illinois shore east of this?
A. No, sir.
21. Did you ever run a boat over there?
A. No, sir.
22. Why not?
A. There was not water enough and it was out of my road, anyway.
23. Is the channel you have described the one that is used by pilots in running steamboats up and down the Mississippi river in carrying the commerce of the country?
A. Yes, sir.
24. Did steamboats use any other?

66 Objection as incompetent. Overruled. D'f't excepts.

A. No, sir.

25. Do you know whether or not there is a pocket running over from the channel towards Hamilton?

A. I never went over in it.

26. Do you know whether or not there is such a one?

A. I do not.

27. I understand you to say that the main navigable — is about 30 feet east of the first pier?

A. Yes, sir.

Cross-examination:

1. What is your age?

A. Sixty-five.

2. Who have you been connected in business with at Montrose?

A. With Capt. Owen.

3. What is his given name?

A. R. S.

4. Is he the man commonly called Zip Owen?

A. Yes, sir.

5. When did you first commence piloting over these rapids?

A. In 1758, I guess, was my first work.

6. What did you then pilot?

A. Flat-boats, barges, rafts.

7. How long did you continue in that work before you went into the army?

A. I failed to get into the army. I was too spunky to fight. I was too little.

8. Have you continued in this business all the time from 1858 up to the present, in this same business?

A. I have been running flat-boats, barges, rafts, and everything that came along in the shape of water craft.

9. During that time you have never had occasion to land any of these crafts at Hamilton, have you?

A. Yes, sir.

10. When?

A. In high water I have come over there and landed in the slough; went clear down to the bridge, slough bridge.

11. What would be the difference in the stage of water between high and low water on these rapids?

A. 7 or 8 feet.

12. Between extreme high and extreme low water?

A. About 10 feet.

13. Is that on the rapids or below?

67 A. It is all over the country when the water is over the canal wall, like it is sometimes.

14. It don't get over the canal wall at the upper end, does it?

A. Pretty close to it with 8 or 10 feet of water.

15. That is at the highest water?

A. Yes, sir.

16. Did you know the steam ferries that used to run there, the Gate City and the Hamilton Belle?

A. Yes, sir.

17. Do you know what their draft was?

A. No, sir.

18. Do you know whether these boats made regular trips from Keokuk to the upper landing that runs straight out from Main street, in Hamilton, and the landing where the old Wabash depot was prior to the building of the bridge?

A. I have seen them landing over there many times, but I don't believe I was ever over there when they landed.

19. Did you ever make any soundings east of what you regarded as the channel of the river?

A. No, sir.

20. And never tried to run any boats there?

A. No, sir.

21. You say you judge of the channel by the looks of the water?

A. Yes, sir.

22. Have you taken any rafts over the rapids this year?

A. Yes.

23. How many?

A. I don't remember the exact number. I have taken all the rafts this year that have come over.

24. How many trips?

A. Nine trips.

25. How many trips to the fleet?

A. 2.

26. Have not the rafts as well as the boats come through the canal this year?

A. Yes, sir; all but 2.

27. Did you and your partner have some trouble with the Keokuk and Hamilton Bridge Co. at one time?

Objection as incompetent. Overruled. State excepts.

A. At one time when pulling a steamboat through the bridge we had a chimney knocked off.

28. And they refused to pay your claim?

A. I never put in a claim.

29. Didn't you or your partner, Mr. Owen, put in a claim for damage to the boat?

A. He might, but I didn't own the boat.

30. Wasn't you his partner?

A. Yes, sir; but I wasn't on that boat; I was on the Prescott. There was no bill put in.

68

31. Never presented any?

A. No, sir.

32. What span was it that the boat ran under?

A. The wide one; the one nearest the draw.

Objection as immaterial, question and answer. Objection sustained. Defendant excepts.

Redirect:

1. Those were rafts that you landed on the Hamilton side?
A. Yes, sir; drop them down in the slough.
2. It was high water?
A. Yes, sir.

Recross:

1. One-half or three-fourths of a mile above the bridge?
A. Yes, sir.

Witness excused.

R. S. OWEN, for the People, being sworn, testified:

1. Where do you live?
A. Montrose, Iowa.
2. How long have you lived there?
A. 56 years last June.
3. What is your age?
A. 64, coming 65 next fall.
4. What is your business?
A. Pilot and master of steamboat; has been for the last 15 years (possibly said 50 years).
5. On what river have you been pilot?
A. On the Mississippi and Des Moines.
6. From what point to what point?
A. From Montrose to Keokuk mostly; sometimes to Rock Island, but not often.
7. Are you acquainted with the location of the city of Keokuk?
A. Yes, sir.
8. What city is opposite it?
A. Hamilton, Illinois.
9. Is there any bridge across the river there?
A. Yes, sir.
9. Did you ever run as pilot on that river before the bridge was built?
A. Yes, sir; I commenced in 1852.
10. Are you acquainted with the Mississippi river from Montrose to Keokuk?
69 A. I think I could not have worked from 1864 in all the low water, if I was not.
11. Do you know where the main navigable channel of the Mississippi river is?
A. Yes, sir.
12. About how far is the middle of the main navigable channel of the river from the Iowa shore, where it passes under the bridge?

Objection as incompetent because it is leading and calls for conclusion of the witness. Overruled. Defendant excepts.

12 (continued). At a moderate stage of the water?
A. I will take out the pivot pier. I don't know how wide it is.

I know about how far the channel runs in. It is about 20 feet from the abutment in. That would put the channel out about 275 feet.

13. About how far east of the pivot pier is the navigable channel of the river?

A. I consider the pivot pier as standing in the middle of the channel. It might be 10 feet or even 20 feet one way or the other, but I consider it as standing in the middle of the channel. It is where we always run before the bridge was there.

14. About how wide is the channel there?

A. I think, probably, it might be 350 or 400 feet.

15. Is there any other navigable channel up and down the river except the one you have described?

A. I don't know of any.

16. Is this channel you have described the channel used by steamboats in passing up and down the river in carrying the commerce of the country?

Objection as leading and calling for conclusion.

By the COURT: I understand the witness is an expert. Answer the question.

Defendant excepts.

A. I never knew any other channel.

17. Do you know anything of a pocket there in the river towards Hamilton?

A. Yes, sir; I have been in it.

18. Does it have anything to do with the channel?

A. No, sir; there are plenty of pockets that have nothing whatever to do with the channel.

70 19. Suppose you get a boat into one of the deep-water places—one of those pockets—where do they generally run to or what do you have to do?

A. We have to go the same way out.

20. Did you ever make a sounding of the Mississippi aroun*f* there?

A. Yes, sir; some.

21. How do you find out where the channel of a river is and know how to run a boat up and down the river?

A. By looking at the water. I have been aground outside the channel with a steamboat of lumber.

22. With an ordinary stage of water?

A. No, sir; a low stage of water, and we were coming over the rapids and got caught in a storm. We had started to the lime-kiln and it blowed so that it took us over and landed us above Waggoner's.

EDMUNDS: That was 3 or 4 miles up the river?

A. Yes, sir.

Defendant moves to strike out this answer. Sustained.

Cross-examination:

1. You have never been in the habit of landing any sort of craft at Hamilton, have you?

A. I have landed down the slough with lumber and up at Decalion.

2. In a low stage of water?

A. No, sir; moderate. We come down there passed Montebello and there is a deep channel and one channel down that shore pretty near to Decalion, and I have landed in there with many rafts of lumber. At the lower end there was no channel; could not get to Hamilton at all.

3. Answer my question. I understand you to say you have dropped rafts down the slough.

A. Yes; at a good stage of water.

4. But at a less stage of water you have come down to where this dike runs out from Main street in Hamilton?

A. No, sir; I never did.

5. Down to what point did you come on the side?

A. Down to Decalion.

6. Where is Decalion?

A. About two miles above Hamilton.

71 7. That is, it is above the lower chain?

A. Yes, sir; it is.

8. I am not asking you if you landed anything above the lower chain. I am asking you if you landed anything at Hamilton, and you have in a good stage of water run into the slough?

A. Yes.

9. Next to the main shore?

A. No, sir; it is where Dickinson runs lumber in.

10. Is that not next to the main shore?

A. No, sir; it is a cut slough, where they used to run water in.

11. This slough you refer to is next to the mill?

A. Yes, sir.

12. Have you ever landed any raft or any sort of craft down below the bridge on the Illinois side?

A. Never did.

13. Were you there in '61, '2, and '3, and prior to that time?

A. Yes, sir.

14. Did you know the ferry-boat, the Gate City?

A. Yes, sir.

15. And the ferry, the Hamilton Belle?

A. Yes, sir.

16. Do you know what water they drew?

A. I think the Hamilton Belle drew about sixteen (16) inches and the Gate City about two feet.

17. How much with teams or any ordinary load?

A. I suppose the Gate City — about 30 inches; possibly more.

18. And the Hamilton Belle?

A. I think not more than 2 feet; not more than that, at any rate. She was a gunnel (gunwale) boat and very shallow.

19. Did not these boats make regular trips between Keokuk and Hamilton prior to the erection of this bridge?

A. Yes, sir.

20. About how many times a day?

A. I don't know—day and night.

21. Before the Wabash railroad was built, do you recollect where they landed?

A. A little above the bridge, I think.

22. About 80 rods above, was it not?

A. Possibly.

23. Where the road comes out from Main street in Hamilton they had a ferry landing up there some place, had they not?

A. Yes, sir; it was a convenient place.

72 24. When the Wabash built in there they moved down to the point just above the present bridge?

A. I think so; I could not locate it exactly.

25. What was the condition of the water prior to the construction of this dike from the main shore at Hamilton out to the river below the point where the dike ended?

A. There was a ferry-boat crossing about on a line either above or below the bridge, but at a low stage of water; I don't know whether it ran to the upper landing or not.

26. Have you and Mr. J. H. Cole, as superintendent of the bridge, had any difficulty about any claim you had against the bridge?

A. We never had any difficulty.

27. You made a claim?

A. Yes, sir; and he ought to have paid it. If I had sued I could have got it. It was all his fault.

28. You said at the first of your examination that you asked for the length of the spans?

A. Yes, sir; I asked for them.

29. Where?

A. Right here. I said if he would give me the width of the pier I would give the exact distance of the channel from the shore out.

30. Could not these other gentlemen here tell you as well as Cole?

A. I was not asking them.

31. Do you know how wide the river is between Hamilton and Keokuk?

A. I looked at the map today, but I have forgotten.

32. How wide was the river there before the bridge was built?

A. I don't remember. I looked at the map today, but don't remember.

33. Don't you know that prior to the building of that bridge the St. Louis and Keokuk packets were in the habit of landing at the Wabash depot at Hamilton and taking off and on freight?

A. They never did. If they did it had to be a pretty good stage of water, if they did.

Redirect:

1. Did you ever see a large steamboat go in there?

A. I never did.

Witness excused.

73 C. H. FARRIS, for People, being sworn, testified:

Mr. BERRY: Where do you reside?

A. Montrose, Iowa.

2. How long have you lived there?

A. 20 years next September.

3. What is your business?

A. Pilot on the river.

4. What river?

A. The Mississippi.

5. From what points to what points do you generally run?

A. I used to run from St. Louis to St. Paul; principally on the rapids for the last 21 years.

6. From Montrose to Keokuk?

A. Yes, sir.

7. You know the locations of the cities of Keokuk and Hamilton?

A. Yes, sir; both of them.

8. Is there any bridge across the river there?

A. Yes, sir.

9. Did you run on the river as pilot prior to the building of that bridge?

A. Yes, sir; not very long before that.

10. And have continued to run ever since?

A. Yes, sir.

11. About how frequently have you gone up and down the river the last few years, how much average?

A. For a while I was up and down the river 3 or 4 times a day.

12. Are you acquainted with the main navigable channel of the river at this point?

A. Yes, sir.

13. Do you know where the middle of the main navigable channel of the Mississippi river is under that bridge?

Objection as incompetent because calling for conclusion of witness. Objection overruled. Defendant excepts.

14. Do you know where it is?

A. Yes, sir.

15. Tell the court where it is, about how far it is from the Iowa.

(From Q. 15 to Q. 27 not in bill of exceptions.)

74 27. Are you acquainted with the general depth of the water clear over to the Illinois side?

A. I have not been much outside of the channel.

28. Did you ever run a boat over to the Illinois shore?

A. Not above the bridge.

29. Did you below it?

A. Yes, sir.

30. When and where?

A. I was over there a few times with the steamboat Rescue for excursions.

31. Where did you land then?

A. Down below the bridge. There is a little slough, and we landed across that slough.

32. What was the stage of the water then?

A. Pretty fair. I presume it would be called a medium stage.

33. What is there that runs across and gives a depth of water?

A. There is a pocket that leads across there.

34. Could you have gone up and down the river from there where you landed, or did you have to go back the same way you went in?

A. I think I had to go right back. I think there was a bar below.

Cross-examination:

EDMUNDS: There was a depth of water sufficient for the boat to have gone above if the bridge had not been there, at that stage of water?

A. I think, possibly, there might have been. I would not be sure.

2. You have not landed boats and other crafts there at Hamilton, except for those excursions?

A. Yes, sir; I have landed other boats at Hamilton.

3. Whereabouts?

A. I have landed them down in the slough in high water and in low water. I have landed very small boats over there.

4. What boat did you ever land at Hamilton in low water?

A. The little steamer Enterprise; towed some lumber.

5. When was that?

A. I could not tell you; probably 6 or 7 years ago.

6. Since the construction of that bridge?

A. Yes, sir.

75 7. Did you run below the bridge and run under one of the spans?

A. Yes, sir.

8. Do you remember who you run that lumber for?

A. Mr. Bartlett.

9. Do you recollect what year it was?

A. I could not say exactly. It was in the neighborhood of 6 or 7 years ago. I was over there for a week, working round. It was low water, and we had a good deal of trouble in getting the stuff up there.

10. You had a raft go up there, a piece at a time?

A. Yes; shoved it up under the span.

11. Under the last span at the east end of the bridge?

A. Yes.

12. Shoved it up to where they could get the lumber out on the dump or shore?

A. Yes, sir; some of it we got up, and some we didn't.

13. What was the stage of the water?

A. It was low water; I should think, probably, about the stage it is now. It might have been a little lower.

14. How much—about low-water mark?

A. I hardly think it was, but I don't know much about the Keokuk marks; but it was low for the Montrose marks.

15. Have you ever had occasion, prior to the construction of the bridge or since, to run across above the bridge to any point in Illinois—that is, to Hamilton?

A. Only in high water.

16. Not in low water?

A. No, sir.

17. Have you ever had occasion to take soundings of the condition of the river above the bridge and east of what you call the channel of the river between that and the Hamilton shore?

A. No, sir.

18. Did you know the steamer Keokuk that used to run there?

A. Yes, sir.

19. Do you know how much water she drew?

A. No, sir; I don't think she drew very deep, though.

20. She carried about 40 teams, didn't she?

A. I don't know; she was a very large ferry.

76 21. Do you recollect the time that span was knocked out, 8 or 10 years ago?

A. Yes, sir.

22. Do you recollect what boat went in and did the ferrying?

A. No, sir.

23. Do you know how much water it drew?

A. No, sir.

24. Do you know where it landed on the Illinois shore?

A. No, sir.

Witness excused.

C. L. BARTLETT, called and sworn, testified for the bridge company:

EDMUNDS: Where do you live, Mr. Bartlett?

A. Hamilton, Ill.

2. How long have you lived there?

A. About 6 years.

3. Were you born there?

A. No, sir.

4. What has been your business prior to coming to Hamilton?

A. Civil engineer and railroad conductor.

5. Have you had occasion to go over that dike between Main street, in Hamilton, to the bridge toll-house frequently in the last few weeks?

A. Yes, sir.

6. Have you ever made an estimate of the value of the slough bridge and that dike from Main street to the toll-house?

A. I made such an estimate; yes, sir.

7. What estimate did you put on the value of that property, say on the first day of May, 1894?

Objection as not proper.

8. State its fair cash value.

By the COURT: You asked only for its value.

A. My estimate did not include the fair cash value; it was the value of the work, not the land it is on.

9. What is your estimate of the cost of putting it there and its value in its present condition?

Same objection. Overruled. State excepts.

77 A. I will have to refer to the paper that I made the estimate on. (Refers to paper.) $7,420.

By the COURT: For the dike and bridge?

A. Yes, sir.

10. As a civil engineer I will ask you to look at this plat—you can get it easier from this than you can from the description in the records—and say whether this is a true description of the dike, representation of the dike, and description of the pieces of property described there.

Objection as incompetent, as there has been no claim made that the description of the property is not correct.

By the COURT: I will hear the evidence.

State excepts.

BERRY: They have made no objection to the fact of the dike not being properly described.

EDMUNDS: If we have not, I move to amend our objections.

HARTZELL: We object to any amendment.

EDMUNDS: We are objecting to the assessment of the dike under the description of it as given.

By the COURT: I suppose the main question would be what effect this would have on evidence from the other side. They are now ready for trial, and to allow this motion after the time for filing objections has expired hardly seems the proper thing to do.

EDMUNDS: I will ask this question, Mr. Bartlett: Are there two pieces of land described in that description?

Same objection. Objection sustained. D'f't excepts.

12. Are there two pieces that come together and unite in that description?

Objection as leading and improper. Same ruling. Exception.

13. Are there two pieces of land described in that notice?

Objection, as the notice shows on its face, and there is also no objection on file. Objection sustained. Defendant excepts.

Cross-examination:

78 1. In these estimates you made, you did not estimate the value of the land, but just the work?

A. Yes, sir.

2. As you can see it now?

A. That is correct.

3. Is it not a fact that a great deal of dirt has accumulated on the sides of this dike, so that the dike does not appear to be near as high as it was when built?

A. It is likely.

4. You figured from the top of the dike, now?

A. Yes, sir.

5. Is it not probable that the dike has become more solid and valuable than it would be at first?

A. No; I don't think so.

6. I understand you estimate simply the cost of labor in making it from the top of the ground to the top of the dike?

A. And the cost of the material and the cost of ground to get the dirt from.

7. No estimate on the value of the land?

A. No, sir.

Redirect:

1. About how many acres of land does the dike cover?

A. Between 5 and 6 acres.

2. What is that land worth per acre?

A. I presume it would be worth $75 per acre.

Witness excused.

Court adjourned to August 13th, 1895.

79 (AUGUST 13TH—Continued.)

GEORGE L. EVENS, being sworn, testified for the bridge company:

EDMUNDS: Where do you reside?

A. Burnside, Illinois.

2. Did you hold any official position in 1894?

A. Yes, sir.

3. What was it?

A. Assessor of Pilot Grove township.

4. At what ratio of its fair cash value did you assess the property in that township in that year—1894?

Objection: First, that it is immaterial; second, that Mr. Evans was the assessor of that township, and as such assessor is required to make a sworn return, and on that sworn return there is a record, and the record is the best evidence; third, that Mr. Evans is incompetent to impeach his sworn return.

Objection is overruled. State excepts.

A. I think one-third.

5. That is what you endeavored to assess it at?

Same objection. Same ruling and exception by pl'ff.

A. Yes, sir.

No cross-examination.

Witness excused.

S. S. GRAY, called *and* for the bridge company, swore:

EDMUNDS: Where do you reside?
A. At Hamilton, Ill.
2. How long have you resided there?
A. About 45 years.
3. That is in this county?
A. Yes, sir.
4. Do you know the dike leading from Main street, in Hamilton, to the toll-house of the bridge?
A. Yes, sir.
5. Have you made an estimate of the value of that dike? If so, please give it; first give its dimensions.
80 A. In regard to the length it is nearly 3,500 ft. It runs from 20 to 22 feet wide and, as near as I could estimate it, from 7 to 10 feet deep; some places less than that.
6. What is the fair market value of that property?

Objection as incompetent. Objection sustained. Defendant excepts.

7. What is the value of that property?

Same objection. Same ruling. Defendant excepts.

8. What is the fair cash value of that property estimated at a voluntary sale?
A. I think somewhere from 4 to 5,000 dollars.

Cross-examination:

BERRY: How much do you say?
A. From $4,000 to $5,000.
2. Do I understand you to say to this court that that dike could be placed there as it now stands for $4,000?

Objection as not cross-examination. Overruled. Defendant excepts.

A. I think it could.
3. How do you get at that value?
A. By the number of cubic yards and the number of perch of rock.
4. You figure the material that is in there?
A. Yes, sir.
5. At what it is worth there?
A. At what it can be placed there for.
6. Where did you figure it would have to come from?
A. From a 6-foot limit of the dike.
7. You figured that all the dirt and rock could be got within a 6-foot limit of the dike?
A. No, sir; from Hamilton.
8. Do you think all the dirt could be got out from 60 feet wide and put down there?
A. Yes, sir.
9. How wide is the bottom of the dike?

A. I don't know exactly; between 20 and 30 feet.

10. It is at least 30 feet?

A. I don't know exactly; it is over 30 feet in some places.

11. An average of 30 feet?

A. I think so, on the bottom.

81 12. And 8 or 10 feet high?

A. In places it is probably 10 feet; other places not over 2 or 3; average 8 to 10 feet.

12. That would leave about 16 or 16½ feet on each side of the dike to get dirt. And do you say to this court that you could go out on each side no further than that and get enough dirt to make that dike?

A. I think so.

13. Did they?

A. Some they took outside of that, but it was pretty close to it.

14. You would have to make a cut on each side of the dike averaging at least 10 feet deep?

A. When they took the dirt out they didn't take it out that deep.

15. Is the dike worth any more than the dirt and rock in it?

Objection as not cross examination. Overruled. Defendant excepts.

A. I could not say whether it is worth more than that or not.

16. Did you ever know of a dike being sold?

A. No, sir.

17. You know nothing of the market value of it?

A. No, sir.

18. Then what do you mean by the fair cash value of it?

A. What it would cost to replace or to construct one in the same way.

19. You answered Judge Edmunds by saying you knew what it would sell for at a fair cash sale.

A. I do not think so.

20. That was his question.

21. *That was his question.*

A. I think his question was, What was the dike worth? My opinion is that it is worth what it would cost to put it there.

22. Does the dike get more valuable as it stands and gets more solid from year to year?

A. That depends on circumstances.

23. Is it now more valuable than when it was first built?

A. Yes, sir; because it has been added to.

24. Is it not more settled and the land on each side become more firm so as to make it more valuable?

A. I suppose so.

25. In your estimate do you include the land over which

82 it passes, the right of way and all that?

A. No, sir; nothing but the material.

26. What you think it would cost to put the dirt and rock there?

A. Yes, sir.

27. Not estimated at anything else?
A. That is all I estimated.
28. You don't pretend to say what it would sell for if put up for sale at a fair cash sale?

Objection. Overruled. Defendant excepts.

A. No, sir.
29. As to the market value, you have no idea of it?

Same objection. Overruled. Defendant excepts.

A. I never saw any of it sold.
30. Did you include the slough bridge?
A. No, sir.

Redirect:

1. You made no estimate of the slough bridge?
A. No, sir.

Witness excused.

W. P. RAICH, for bridge company, called and sworn, testified:

EDMUNDS: Where do you reside?
A. Warsaw, Ill.
2. Did you hold any official position in the town of Warsaw in 1894; and, if so, what was it?
A. I was assessor.
3. At what ratio of its fair cash market value at a voluntary sale did you make the assessment?

Same objection as to similar question to last preceding witness. Overruled. State excepts.

A. As near as I could determine I assessed at ⅓ its value.

Cross examination:

BERRY: You know nothing about the value of the Hamilton bridge; you didn't assess that?
A. No, sir.

Witness excused.

83 HENRY HOFERDEITZ, for defendant, called and sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894?
A. Yes, sir; I was assessor of Nauvoo township.
2. State at what ratio of its fair cash value at a voluntary sale did you assess the property in that township, both real and personal.

Same objection. Same ruling. Plaintiff except-.

A. As near as I could come at it, ⅓.

Cross-examination:

(None.)

Witness excused.

J. J. HEFFLEMAN, for def't, being sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894; and, if so, what was it?

A. I was assessor of Appanoose township; also in 1895.

2. In assessing the real and personal property of that township at what ratio of its fair cash value at a voluntary sale did you make your assessment?

Same objection. Same ruling. Same exception by pl'ff.

A. I aimed to assess property as near as I could at one-third.

Cross-examination:

(None.)

Witness excused.

S. T. LAYTON, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in '94?

A. Yes, sir; that of assessor of Dallas City township.

2. At what ratio of its fair cash value at a voluntary sale did you assess the real and personal property in that township for that year?

Same objection. Same ruling and exception.

A. ⅓ of its fair cash value.

Cross-examination:

(None.)

Witness excused.

84 W. H. WALTERS, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894; and, if so, what was it?

A. Yes, sir; assessor of Durham township.

2. At what ratio of its fair cash value at a voluntary sale did you assess the property of that township?

Same objection, ruling, and exception.

A. One-third.

Cross-examination:

(None.)

Witness excused.

I. F. LANDIS, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894; and, if so, what was it?

A. Yes, sir; assessor La Harpe township.

2. At what ratio of its fair cash value did you assess the property of La Harpe township at a voluntary sale?

Same objection. Same ruling and exception.

A. I aimed to assess it at ⅓, as near as I could.

Cross-examination:

BERRY: You think the La Harpe assessor's book is at La Harpe?

A. Yes, sir.

2. You took the oath prescribed by law?

Objection because the book should be produced, and this is not cross-examination.

The COURT: I think you have not laid a sufficient foundation for the introduction of secondary evidence.

Mr. BERRY: Call E. McClure.

E. MCCLURE, for People, swore:

BERRY: Do you hold any official position?

Objection, as this party is not on the stand.

Overruled. Defendant excepts.

2. What position do you hold?

A. County clerk.

85 3. As such clerk, are the assessor's books in your custody?

A. Part of them.

4. Do you know where the La Harpe book is?

A. I think in La Harpe.

5. It is not in your custody?

A. No, sir.

Witness excused.

BERRY to witness on the stand, LANDIS: State whether or not you signed the usual oath taken by the assessor before beginning the work.

Objection as immaterial. Let it be shown what he signed, if he signed anything.

The COURT: The book is the best evidence.

Mr. BERRY: Landis, don't you go away.

Witness excused for the time.

C. A. MCCONNELL, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in the county in 1894; and, if so, what was it?

A. I was assessor.

2. Of what township?
A. Fountain Green.
3. At what ratio of its fair cash value at a voluntary sale did you assess the property in that township, real and personal?

Same objection. Overruled. Plaintiff excepts.

A. I assessed at ⅓, as near as I could get at it.

Cross-examination:

BERRY: Answer me; is that your signature?
A. Yes, sir.
2. You signed that before taking charge of these books and before making that assessment, did you?

Objection as leading.

By the COURT: Have you show- what book that is, Mr. Berry.
EDMUNDS: No, sir.
BERRY: What book is this?
A. The assessor's book for 1894.
4. That is the only year that you were assessor?
A. Yes, sir.
86 5. Is this your signature?
A. Yes, sir.

Objection as not material and no part of the cross-examination. We have not asked anything about that book. We asked at what ratio he made the assessment.
The COURT: That is not established as an assessor's book, is it?
BERRY: He says so.
The COURT: Objection is overruled.
Defendant excepts.

6. Is that your signature (showing in book)?
A. Yes, sir.

Objection as not cross-examination. Overruled. Defendant excepts.

7. That signature is on this book, on the first open leaf, marked "*a*," left-hand corner, at the bottom?
A. Yes, sir.

Objection as not cross examination and no foundation laid. Overruled. Defendant excepts.

8. And that is your signature to the affidavit on the last page of the same book?
A. Yes, sir.

Same objection as last. Defendant now moves to strike out all this testimony as not cross-examination. Motion overruled. Defendant excepts.

Witness excused.

LEWIS HULL, for d'f't, sworn, testified:

EDMUNDS: Did you hold any official position in Hancock county in 1894; and, if so, what?

A. I was assessor of Rocky Run tp.

2. At what ratio of its fair cash value at a voluntary sale did you assess the real and personal property of Rocky Run township in 1894?

Objection for the same reason as before, and for the further reason that the answer will incriminate him and impeach his official act. Overruled. Pl'ff excepts.

A. I assessed property at ⅓ its fair cash value; what I consider would be a forced sale.

Cross-examination:

BERRY: Did you ever see this book before?

A. Yes, sir.

87 2. What book is it?

A. Assessor's book for 1894.

3. And shows the assessment made by you that year?

A. Yes, sir.

Objection, as the book will show for itself.

4. Is that your signature?

A. Yes, sir.

5. On the fly-leaf marked "A"?

A. Yes, sir.

6. Is this your signature on the last fly-leaf of the book?

A. Yes, sir.

Witness excused.

W. H. WIER, for d'f't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894?

A. I did.

2. What was it?

A. Assessor of St. Mary's township.

3. At what ratio of the fair cash value, considered at a voluntary sale, did you assess the real and personal property of that township for 1894?

A. I did not reassess the real estate—very little of it—only the personal property.

4. At what ratio of its fair cash value did you assess it?

A. I presume it was something about ⅓.

Cross-examination:

BERRY: Is your assessing book present?

A. No, sir.

2. Did you sign a book something like this? (Shows assessor's book.)

A. Yes, sir.

It is conceded that the witness signed the assessor's book, being the oath to be taken before entering on his duties as assessor of St. Mary's township, on the first page of the book; also signed the affidavit of last page. Same concession is made as to the assessor of La Harpe.

Witness excused.

88 S. SMITH, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894; and, if so, what?

A. Assessor of Hancock township.

2. At what ratio of its fair cash market value at a voluntary sale did you assess the property in that township?

Same objection. Same ruling and exception.

A. One-third.

Cross-examination:

BERRY: Did you ever see this book before?

A. Yes, sir.

2. What book is it?

A. Assessor's book for Hancock tp. for 1894.

3. And contains the assessment you made?

A. Yes, sir.

4. Is that your signature?

A. Yes, sir.

5. Being on the fly-leaf marked "A"?

A. Yes, sir.

6. And is that your signature on the last leaf of the book?

A. Yes, sir.

Witness excused.

J. E. HORNEY, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894?

A. Yes, sir.

2. What was it?

A. Assessor Harmony township.

3. In making the assessment of the real and personal property in that township, at what ratio of its fair cash value, at a voluntary sale, did you assess it?

Same objection. Overruled. Same exception.

A. The voluntary part I don't know about. I assessed property as near as I could determine at ⅓ of its fair cash value.

Cross-examination:

BERRY: Did you ever see this book before?

A. Yes, sir; or one like it. I presume that is it.

2. What book is it?

A. The assessor's book of Harmony township for 1894.

89 3. Is that your signature on page "A," first fly-leaf on the book?

A. I presume it is; it looks like it.

4. And is this your signature on the last leaf?

A. Yes, sir.

Witness excused.

J. H. RHODES, for d'f't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894?

A. Yes, sir. *A. Yes, sir.* I was assessor of St. Albans, and also collector for part of that year.

2. At what ratio of the fair cash value, estimated at a voluntary sale, did you assess the property, real and personal, in your township?

Same objection. Same ruling. Exception.

A. I aimed to assess the property at ⅓ its value as near as I could determine.

Cross-examination:

BERRY: It is conceded that the assessor signed the book on the 1st and last pages the same as the others.

Witness excused.

JAS. W. BIGGS, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894?

A. Yes, sir. I was assessor of Beer Creek township.

2. At what ratio of its fair cash value did you assess the property of that township, estimated at a voluntary sale?

Same objection, ruling, and exception.

A. I don't know that I am going to answer that question.

By the COURT: On what ground do you decline to answer?

A. On the ground those fellows have taken (nodding toward the People's attorneys); they are going to make a fellow perjure himself.

90 COURT: You decline on the ground that it will incriminate you?

A. Yes, sir.

The COURT: The witness has that privilege, gentlemen.

3. Did you assess the property at its fair cash value, estimated at a voluntary sale?

Objection, as the record will show; also that you cannot impeach an officer's official act by his own testimony.

The COURT: Do you claim the same privilege as to this question?

A. Yes, sir.

4. Do you mean to tell the court that in answering these questions it would subject you to criminal prosecution under the laws of this State?

Objection as improper. Sustained. Defendant excepts.

5. Why do you refuse to answer the 2nd and 3rd questions propounded by me?

Objection, as this is the witness of defendant. Objection sustained. Defendant excepts.

6. Do you know the northeast quarter of section 1, Beer Creek twonship?

A. Yes, sir.

7. What is that reasonably worth at a fair, cash, voluntary sale?

Objection that it will incriminate the witness.

8. What was it worth on the 1st day of May, 1894?

Objection on the ground that it will impeach the officer's sworn return and would incriminate him and immaterial.

The COURT: Sustained on the last ground. Def't excepts.

9. What is the value of the northwest ¼ southwest ¼ of section one in that township on the first day of May, 1894?

Same objection and as immaterial. Sustained. Defendant excepts.

EDMUNDS: I offer to ask the same questions in relation to each and every other tract of land in that township assessed by this witness.

Objection for the same reason. Objection sustained. Defendant excepts.

Witness excused.

91 GEO. WHITE, for d'f't, sworn, testified:

EDMUNDS: Did you hold any official position, Mr. White, in this county in 1894?

A. Yes, sir.

2. What?

A. Assessor of Prairie township.

3. At what ratio of the fair cash value at a voluntary sale did you assess the real and personal property in that township?

Objection that it is immaterial; also for the reasons given regarding impeaching an officer. Overruled. Pl'ff excepts.

A. I assessed personal property at ⅓.

4. How about the real property?

A. That is assessed at about ⅓th.

Cross-examination:

BERRY: Did you ever see that book before?

A. Yes, sir.

2. What book is it?

A. The assessor's book.
3. For what year?
A. 1894.
4. Is that your signature to the oath on the fly-leaf marked "A"?
A. Yes, sir.
5. And that — your signature to the affidavit on the last page?
A. Yes, sir.

Witness excused.

S. WYLES, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894? If so, what?
A. I was assessor of Sonora township.
2. At what ratio of its fair cash value, estimated at a voluntary sale, did you assess the real and personal property for that year?

Same objections as before. Overruled. Pl'ff excepts.

A. At the customary ratio.
3. What was that?

Same objection. Overruled. Pl'ff excepts.

92 A. One-third on personalty.
4. What on real estate?

Same objection, ruling, and exception.

A. From ¼th to ⅓th.

Cross-examination:

BERRY: Did you ever see this book before?
A. Yes, sir.
2. What is it?
A. Assessor's book of Sonora for 1894.
3. Is that your signature to the oath found on page "A"?
A. Yes, sir.
4. And also your signature on the last page of the affidavit?
A. Yes, sir.

Witness excused.

H. LONGSHIE, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in '94?
A. Yes, sir.
2. What was it?
A. Assessor of Pontoosuc township.
3. At what ratio of its fair cash value, estimated at a voluntary sale, did you assess the real and personal property in that township that year?

Same objection. Overruled. Pl'ff excepts.

A. At ⅓ its fair cash value.

Cross-examination:

BERRY: Do you know what book this is?
A. Yes, sir.
2. What book is it?
A. Assessor's book for 1894.
3. And contains the assessment you made?
A. Yes, sir.
4. Is that your signature to the oath to be taken before entering on your duties?
A. Yes, sir.
5. And this is your signature to the affidavit at the last of the book?
A. Yes, sir.

Witness excused.

93 DAVID KEMP, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894; and, if so, what?
A. Yes; assessor of Chili township.
2. At what ratio of its fair cash value, estimated at a voluntary sale, did you assess the real and personal property in that township that year?

Same objection. Same ruling and exception.

A. Personalty about ⅓rd.
3. And the real estate?
A. About ¼th.

Cross-examination:

BERRY: What book is this?
A. Assessor's book for 1894.
2. And contains your assessment of that township for that year?
A. Yes, sir.
3. And is that your signature on the first fly-leaf of the book to the oath before entering on the duties?
A. Yes, sir.
4. And to the affidavit on the last leaf?
A. Yes, sir.

Witness excused.

D. W. LOGAL, for def't, sworn, testified:

EDMUNDS: What township do you reside in?
A. Wilcox.
2. Did you hold any official position in this county in 1894?
A. Yes, sir; I was assessor of Wilcox township.
3. At what ratio of its fair cash value, estimated at a voluntary sale, did you assess the real and personal property that year?

Same objection, ruling, and exception.

A. The personal property I aimed to assess at what I thought it would bring under the hammer, cash.

4. Its value under the hammer?

A. Yes, sir; if a man had to sell it.

5. Not at a voluntary sale, but at a forced sale, what ratio would it have brought?

A. I mean if a man had to sell it.

94 6. You mean you assessed it at such price as you think it would bring at a constable's sale?

A. Yes, sir.

7. At a fair voluntary sale would it be worth more?

A. Yes, sir; possibly a little.

8. How about the real estate?

A. That I didn't assess.

9. Didn't you assess it?

A. Yes, but I didn't change it any.

10. At what ratio was it assessed of its fair cash value at a voluntary sale?

A. Same objection. Same ruling and exception.

A. I think it was assessed somewhere about ⅓ its fair cash value. Some of it I lowered and some I raised.

Cross-examination:

BERRY: What book is this?

A. The book I made out, the assessor's book.

2. For Wilcox township for 1894?

A. Yes, sir.

3. And contains your assessment?

A. Yes, sir.

4. That is your signature on the first fly-leaf marked "A"?

A. Yes, sir.

5. And also your signature on the last leaf?

A. Yes, sir.

Witness excused.

JAMES CORBIN, for def't, sworn, testified:

EDMUNDS: Did you hold any official position in this county in 1894; and, if so, what was it?

A. I was assessor of Carthage township.

2. At what ratio of its fair cash value at a voluntary sale did you assess the real and personal property of this township?

Same objection. Same ruling and exception.

A. As near as I can remember, I think about 30 % of its fair cash value.

3. Both real and personal?

A. Yes, sir.

Cross-examination:

BERRY: What book is this?
A. Assessor's book for 1894.
2. What township?
A. Carthage.
95 3. And contains the assessment made by you that year?
A. Yes.
4. Is that your signature to the oath taken by you before entering on your duties as assessor?
A. Yes, sir.
5. And also your signature to the affidavit on the last page?
A. Yes, sir.

Witness excused.

12 o'clock, adjourned to 1.30 p. m.

Met as adjourned.

H. R. DICKENSON, for def't, sworn, testified:

EDMUNDS: Where do you live?
A. Hamilton, Ill.
2. How long have you lived there?
A. Since May, 1850.
3. Were you there at any time before that?
A. I was at Keokuk, not at Hamilton.
4. Were you there to stay any considerable length of time prior to your coming there in May, 1850?
A. I came in the fall of 1849 and was there about two weeks at the time I bought property and made arrangments to come.
5. Was there any dike from what is now Main street, in Hamilton, out to the river?
A. None.

Objection as immaterial.

A. No, sir; there was nothing there; all wild; nothing but a flat-boat could run across.
6. Take the present route of that dike running west towards Keokuk, and what was the first thing you came to after leaving Main street?

Objection as immaterial. Overruled. Pl'ff excepts.

96 7. After you left Main street going west what was there?
A. The slough.
8. What is it called?
A. Hamilton slough.
9. Is it now bridged?
A. Yes, sir.
10. About how wide is that slough?

Same objection. Overruled. Pl'ff excepts.

A. Originally that slough was nearly 500 feet wide.

11. What was next after you left Hamilton slough?
A. An island, I think 6 or 700 yards wide.
12. What next after that?
A. A big slough that we filled.
13. How wide?
A. It must have been some 350 feet wide.
14. What was next after that?
A. Small tow-head—willow tow-head.
15. Were you connected with the ferry company there?
A. I was one of the first proprietors of it.
16. Who built the dike running out from Main street?
A. I was one of the number—Bryant Bartlett and I.
17. About how much of the Hamilton slough, if any, did you fill, and how much, if any, did you bridge?
A. We bridged clear across to the island. There was a main slough and we bridged across it, making the bridge about ⅓ wider than it is now, and then we run a trestle-work clear through from the bridge to the island.
18. ——.

Objection as immaterial. Overruled. Pl'ff excepts.

19. What distance?
A. I suppose about 600 feet.
20. Has any part of that distance been filled up since then?

Same objection. Overruled. Pl'ff excepts.

A. About 300 feet; that part of the trestle. In 1852 the ice knocked the bridge out and carried off everything in the main slough, and we filled a lot of the space up afterwards with rocks and logs.
21. When this second slough was filled up, which you say was about 300 feet wide, where did it throw the water of the river
97 that used to come down through that slough?

Objection as immaterial. Overruled. Pl'ff excepts.

A. It throwed it west into the river.
22. What effect, if any, did the construction of that dike across that slough and extending it into the river have upon the water and sands floating in the water?
A. It had the effect to fill it up below the dike.
23. About how far beyond the tow-head did this dike extend?
A. 250 to 300 feet.
24. Has a part of that washed away?
A. Yes, sir; more than ⅔.
25. About how much land was made below that dike, between that and the bridge, by reason of the sand being deposited behind this dike, if any?
A. At the middle of that piece that was made it is about 300 feet wide. It is wider at the lower end and narrower at the upper; for the distance between the bridge and that dike, I judge, about 300 feet.

26. What would be its length?

A. About ¼ of a mile, I judge.

27. Tell the court whether or not there was a slough that ran between Island No. 4 and this tow-head that ran across and connected with the slough that you had already cut off.

A. There was a separate island that came around the head of the slough that was probably 200 feet wide, and it had large cottonwoods on it, 18 to 20 inches through, and that slough came around below into the other slough.

28. How wide was that slough?

A. It was very narrow between the island and that tow-head.

29. Was it deep or shallow?

A. It extended out about 4 feet.

30. Was it ever navigated by boats?

A. No, sir; except in high water.

31. After the Wabash depot was built down near where the toll-house is was there any other dike run out there—a fill made into the river—north of the bridge?

98 A. Yes, sir; I made that; commenced it and sold it.

32. It was constructed?

A. Yes, sir.

33. About what is its length?

A. I think about 700 feet.

34. Extending west from the main dike into the river?

A. Yes.

35. Do you recollect of Mr. Hamilton having a warehouse at the west end of the main dike?

A. Yes, sir.

36. What was that warehouse, a mere shed, or was it a house built with roof on both sides, one or two stories high, and what was its shape?

Objection as not material. Overruled. Pl'ff excepts.

A. That warehouse was a house, I judge, about 30 x 40, with an "L," about 30 x 40; 16 to 18 foot posts; substantial, good foundation.

37. Good foundation?

A. Yes, sir; and good roof.

38. Roof shed off both ways or one?

A. Both ways. It was a kind of a "T" addition instead of an "L."

39. How high was the main part of the roof?

A. 16 or 18 foot posts.

40. Two or one story?

A. One, barn style.

Cross-examination:

(None.)

Witness excused.

W. H. PRENTICE, for def't, sworn, testified:

EDMUNDS: Where do you reside?
A. Montebello township.
2. Where did you reside in 1894?
A. Montebello township.
3. Do you know the value of property in that township outside the Keokuk & Hamilton bridge?
A. To a certain extent.
4. Of what value is the land in section 34, in that township—that is, what was the fair, reasonable cash value at a voluntary sale of the land in section 34, township 5 north, 8 west, May 1st, '94?

Objection as incompetent. Objection sustained. Defendant excepts.

5. What personal property did you have in that township on the first day of May, 1894?

Same objection. Sustained. D'f't excepts.

6. Did you have 7 head of horses on that day?

99 Same objection. Same ruling. Same exception.

7. What was the value of those horses?

Same objection. Objection sustained. D'f't excepts.

8. Did you have 50 head of cattle on that day?

Same objection. Same ruling. Same exception.

9. Were those cattle assessed at $8 per head?

Same objection. Same ruling. Same exception.

10. What were the horses assessed at?

Same objection. Same ruling and exception.

11. Look at that paper and say if that is your signature. (Hands witness paper.)
A. That sounds like a letter I would write.
12. Is that your signature?
A. I think it is. (To the reporter: Mark that paper.)

Paper is marked Exhibit- A, K, H, L, and G.

13. Did you on the first day of May, 1894, have the bulls mentioned in that letter?

Objection. Sustained. D'f't excepts.
Defendant offers in evidence the paper marked Exhibit "A."
Defendant now offers to prove by this witness that on the 1st day of May, 1894, witness owned stock mentioned in this letter; that it was in the township of Montebello, and that he ought to have assessed it at from 4 to 5 times what he did assess it, as shown by his assessment book.
Objection as incompetent. Sustained. D'f't excepts.

14. I ask you now if on the 1st day of May, 1894, you owned the stock mentioned in this letter.

A. I want to say that my assessment is in the book.

BERRY: That is not the question.

EDMUNDS: Did you have those cattle on the 1st day of May, 1894?

A. I may have had and I may not.

18. What is your recollection about having had them?

A. We possibly had them.

17. Did you not have in Montebello township, on the 1st day of May, 1894, the stock mentioned in this letter?

100 Objection as incompetent. Sustained. D'f't excepts. The letter offered by def't — as follows:

EXHIBIT A.

HAMILTON, ILL., *July* 26, 1894.

Mr. Henry J. Overman, Keokuk, Iowa. -

DEAR SIR: In reply to yours of 23 inst., would say I haven't any catalogue of my herd, but can give you an idea what I have. I have 4 bulls. I will sell two not quite a yr. old, one a year old, & one three yrs. old. Of that first two, one is out of a cow by Anxiety 4th, the other out of a cow by Flagstaff, a son of the Grove 3rd. The yearling is also out of a cow by Flagstaff. The three-year old is out of a cow by Prince Edwards, a son of Lord Wilson. These bulls are not very fleshy, as they have been running out all summer without any grain, but any of them will make good bulls. My price will be from $50 to $150, depending on the one selected; but as you live so close you had better come over & see the cattle. I am within about 4 miles of Keokuk. You could drive over & back in a half a day, & I promise you if you want a bull I will try to sell you one. I forgot to say that all but the 3-yr.-old bull was sired by Earl of Shadeland, 5½; would like for you to write to me a few days before you come, saying when you will be here, so that I will be sure to be at home.

Hoping to hear from you early, I am, respt.,

W. H. PRENTICE.

Witness excused.

101 H. R. DICKENSON recalled for People:

HARTZELL: Where do you live?

A. Hamilton, Ill.

2. You are a witness on the stand a few minutes ago?

A. Yes, sir.

3. Do you know the Keokuk & Hamilton dike, what is known as the dike, that runs from Main street, in Hamilton, to the Keokuk & Hamilton bridge?

A. Yes, sir.

—. Did you ever have any experience in building that line of work, building dikes?

A. I originally built that dike, but a good deal has been added to it since then.

5. Do you know what the Keokuk & Hamilton Bridge Co. paid for that dike?

Objection as immaterial. Sustained. Pl'f excepts.

6. Do you think you know what such property is worth—that is, in the market?

A. That is pretty hard to tell.

7. Do you think you know what it would cost to build a dike of that character?

Same objection. Same ruling and exception.

8. Is that dike as it now stands more valuable than it was at the time the Keokuk & Hamilton Bridge Co. purchased it?

Objection as immaterial. Sustained. Pl'ff excepts.

9. What, in your opinion, was that dike worth on the 1st day of May, 1894?

A. That is a hard question to answer.

10. What is your best judgment?

A. It would not be worth much to me.

11. What, in your judgment, was the fair cash value of that dike on the 1st day of May, 1894?

Objection for the same reason, that it should be, what is it worth at a fair voluntary sale?

13. What, in your judgment, was the fair cash value of that dike? I mean what would it sell for at a fair voluntary sale on the 1st day of May, 1894?

A. That is a hard question for me to answer. If I didn't own the bridge I would not give much for it.

13. Take the location of the dike and the use it can be put to.

Objection as incompetent. Overruled. D'f't excepts.

A. It would be hard to answer; I could not answer it.

102 14. What is your best judgment?

A. I do not consider anything worth anything unless it can be put to some use. If I was going to buy a horse to sell I would want to know where I could sell it.

15. Did the Keokuk & Hamilton Bridge Co. give $25,000 for the dike?

Objection as leading and immaterial. Objection sustained. Plaintiff excepts.

16. Who was the dike originally built by?

A. I was the first one that built the original dike.

17. Do you know about what it would cost to build the dike now?

Objection as immaterial.

18. To build it on the 1st day of May, 1894?

Same objection. Sustained. Pl'ff excepts.

19. Have you any idea of the fair market value of that dike if it were exposed to a voluntary sale in connection with the bridge and the location?

Same objection. Overruled. D'f't excepts.

A. I would say that if I did not own the bridge I would not give much for the dike.

20. Suppose you owned the bridge, what in your judgment would the dike be worth?

Same objection. Same ruling and exception.

A. I should consider, if I owned the bridge, I would want $25,000 for the dike.

Cross-examination:

EDMUNDS: If you owned the bridge, would it cost anything like $25,000 leading out from Main street, in Hamilton, to the bridge?

A. I think it cost—I made an estimate.

2. I am not asking you what the dike cost. What would it cost now?

A. I cannot answer that question exactly.

3. What, in your judgment, or, in other words, would it cost anything like $25,000 on May 1st, 1894, to construct a dike as good as this one leading from Main street, in Hamilton, to the bridge?

A. I could not answer that unless you would put the
103 ground back in the same condition as it was when we built that dike.

Objection as incompetent.

By the COURT: If you can do so, answer the question.

Plaintiff excepts.

A. I could not build it on the same ground. I would have to take it somewhere else. I could not answer the question unless I owned the property there and wanted it.

4. Could a dike be constructed from the toll-house to Main street by any other route than this is built on?

Objection as immaterial. Sustained. D'f't excepts.

5. What would it cost, in your judgment, to construct a dike as long as this from the toll-house directly to Main street, where this dike enters Main street, in Hamilton?

A. Bridge and all?

6. Yes; the slough bridge and all.

A. I should think it would take 20 to $25,000 to do it.

Redirect:

1. That is a considerably shorter route than this one?

A. You could run down by the railroad; it would not be so far.

Witness excused.

W. R. HAMILTON, sworn, testified for the bridge Co.:

EDMUNDS: Did you ever live in Hamilton, in this county?
A. I lived there from the fall of 1856 to 1858.
2. Was you in any way connected with a warehouse built out at the west end of this dike?
A. Father and I built it.
3. Describe that warehouse. What sort of a foundation did it have?
A. It had a good stone foundation all round.
4. What was the size of the house?
A. I am unable to say the exact size.
5. State about what it was.
A. My best recollection is, it was about 40 x 60, with the addition of an "L" afterwards.
6. Was it a shed or a regular building?
104 A. A regular frame building.
7. How long did it remain there?
A. I think it was burned up either late in the fall of '59 or early in 1860.
8. And you think it was built in '50 or '51?
A. No, sir; later than that.
9. About what time?
A. In 1855 or '56.
10. Was it sided up?
A. Yes, sir.
11. How high was it?
A. I am not certain, but I think it was about 20 feet, making two stories.
12. Roof sloped both ways?
A. Yes, sir; shingle roof.
13. When you moved there this dike had been built, had it, from Main street out to the river?
A. Yes, sir.

Cross-examination:

(None).

Witness excused.

K. H. LOUIS, for def't, sworn, testified:

EDMUNDS: Where do you live?
A. At Hamilton, Ill.
2. What is your business?
A. Shorthand reporter.
3. Were you present at Hamilton, in Montebello township, this county, on the 4th Monday of June, 1894, at a meeting of the township board of review?
A. I do not remember the date.
4. Were you present at that regular meeting?
A. Yes, sir.

5. What did you do at that meeting?
A. I took notes of the proceedings before the board.
6. What is the paper I hand you?

Objection by People as incompetent. Objection sustained.
Defendant now offers to prove by this witness that he, as a shorthand reporter, was present and took the evidence of what occur-ed at the meeting of the board of review and what was said by W. H. Prentice, as assessor of Montebello township, while the State
105 board was considering the objections made by the Keokuk & Hamilton Bridge Co. as to the assessment of its property, and that the paper held by the witness is a correct report of those proceedings as taken from the shorthand notes made at that time.
(Exhibit "B" offered in evidence is found copied in full from page 10 to page 27, both inclusive.)
Defendant excepts to the ruling.

7. Have you the original shorthand notes made by you at that time?
A. No, sir; I have been unable to find them.
8. Did you make a diligent search for them?
A. Yes, sir.
9. Is the paper held by you a correct, true transcript of your notes?

Objection by People as incompetent. Objection sustained. Defendant excepts.
Defendant offers in evidence the paper referred to as being a transcript of the shorthand notes taken at the session of the board of review of Montebello township on the 4th Monday of June, 1894, and what occur-ed there between the assessor, Mr. Prentice, and the agent of the bridge company, Mr. Cole, on account of the assessment of the property of the bridge company as well as other property in the township, as before shown by Exhibit B.
Objection by People is sustained. Defendant excepts.

10. What was said by Mr. Prentice on that day in relation to the assessment of the bridge company's property, as well as the assessment of other property in the township?

Same objection by People. Sustained. Defendant excepts.

11. What officers were present that day constituting the board of review?
A. Glazebrook, supervisor; D. H. Coffman, clerk, and Mr. Prentice, assessor.

Witness excused.

106 Defendant now offers and read- in evidence depositions as follows:

DEPOSITION OF CHARLES F. MULLER.

Stipulation.

It is hereby stipulated between the parties to the taking of this deposition that the same may be taken in shorthand, written out by the stenographer, signature of witness waived, and all objections to questions and answers reserved to the hearing of said cause.

(Signed) SHARP & BERRY BROS.
(Signed) J. H. COLE.

The deposition of Charles F. Muller, of the city of St. Louis and State of Missouri, a witness of lawful age, produced, sworn, and examined upon his corporal oath on the 25th day of July, A. D. 1895, between the hours of ten o'clock a. m. and six o'clock p. m. of said day, at the office of W. H. Blodgett, general solicitor of the Wabash Railroad Company in the city of St. Louis and State of Missouri, by me, Bryant C. Winston, commissioner, duly appointed by a *dedimus protestatum* of commission issued out of the clerk's office of the county court of Hancock county, in the State of Illinois, bearing teste in the name of Elzea McClure, Esq., clerk of said county court, with the seal of said court affixed thereto and to me directed, for the examination of the said Charles F. Muller, a witness in a certain suit and matter in controversy now pending and undetermined in the said county court, wherein The People of the State of Illinois, on the application of the collector of Hancock county for judgment on the tax-list, is plaintiff and The Keokuk and Hamilton Bridge Company is defendant, in behalf of the said defendant, upon all such interrogatories as might be orally directed to be put by either party litigant,
107 and none others, ten days' notice of the time and place of taking of said deposition and one day in addition thereto (Sundays inclusive) for every one hundred miles travel from Carthage, Illinois, the place of holding said county court, to the place where said deposition was taken appearing to have been given by said defendant to said plaintiff.

At the taking of said deposition the said plaintiff appeared by Orville F. Berry, attorney, and said defendant appeared by John H. Cole, attorney, according to the fact.

The said CHARLES F. MULLER, being first duly sworn by me as a witness in said cause, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

Interrogatories propounded to the said Charles F. Muller, a witness produced and sworn as aforesaid on the part of the said defendant, and his answers thereto, as follows:

Interrogatory first. What is your name?

Answer to interrogatory first. Charles F. Muller.

Interrogatory second. What is your age and residence?

Answer to second interrogatory. My age is 51 years and my residence St. Louis, Mo.

Interrogatory third. What is your occupation, Mr. Muller?

Answer to third interrogatory. Civil engineer, bridge-builder.

Interrogatory fourth. What length of time have you been engaged, Mr. Muller, in bridge-building?

Answer to fourth interrogatory. About twenty-five or six years.

Interrogatory fifth. Are you acquainted with the bridge across the Mississippi river at Keokuk, Iowa?

Answer to fifth interrogatory. Yes, sir.

Interrogatory sixth. Describe that structure.

Answer to sixth interrogatory. Well, it is an iron bridge on several piers; the superstructure consists of a certain number
108 of spans, shorter and longer, and of a draw-span. The bridge is used for railroad traffic—for passengers and as a wagon bridge combined.

Interrogatory seventh. When did you examine this bridge, Mr. Muller?

Answer to seventh interrogatory. I did it last year.

Interrogatory eighth. About what time?

Answer to eighth interrogatory. I believe it was August, 1894.

Interrogatory ninth. About what weight per lineal foot are the short spans?

Answer to ninth interrogatory. Some spans are 161 feet and several inches long and weigh, one span, 174,000 pounds.

Interrogatory tenth. That is, would weigh if constructed according to new principles?

Answer to tenth interrogatory. A. Yes, sir.

Interrogatory eleventh. About what do those short spans weigh per lineal foot as they now stand?

Answer to eleventh interrogatory. I have not figured that out.

Interrogatory twelfth. About what load per lineal foot were these spans calculated to carry when new?

Answer to twelfth interrogatory. They were calculated to carry 2,000 pounds per lineal foot.

Interrogatory thirteenth. Have you estimated the cost of a new bridge constructed at this point with a carrying load of two thousand pounds per lineal foot?

Answer to thirteenth interrogatory. Yes, sir.

Interrogatory fourteenth. What would be the cost of a new bridge calculated to carry two thousand pounds per lineal foot built according to modern designs?

Answer to fourteenth interrogatory. It would cost $193,000.00.

Interrogatory fifteenth. Does that include the approach upon the Illinois shore?

Answer to fifteenth interrogatory. Both sides.

Interrogatory sixteenth. Approaches upon both sides?

Answer to sixteenth interrogatory. Yes, sir.

109 Interrogatory seventeenth. At how much did you figure the approach upon the Illinois shore?

Answer to seventeenth interrogatory. $8,300.

Interrogatory eighteenth. At what did you figure the approach upon the Iowa shore?

Answer to eighteenth interrogatory. $3,600.

Interrogatory nineteenth. How much, then, the actual cost of the bridge between the abutments?

Answer to nineteenth interrogatory. $181,100.00.

Interrogatory twentieth. How much would 961 feet of the bridge and the approach in Illinois be worth, in your judgment, in 1894?

Answer to twentieth interrogatory. Would be worth $61,000.00.

Interrogatory twenty-first. How much would approach on the Illinois shore and 1,565 feet of that bridge have been worth in 1894, when you examined it?

Answer to interrogatory twenty-first. Instead of this I have to say $46,300.

Interrogatory twenty-second. That is the value of what, Mr. Muller?

Answer to twenty-second interrogatory. Of the 961 feet, including the Illinois approach, in 1894.

Interrogatory twenty-third. What was the valuation on of $61,000.00 to cover in the answer you made before?

Answer to twenty-third interrogatory. It would be a new construction.

Interrogatory twenty-fourth. What was the value of the old bridge in 1894, including the approach upon the Illinois side, and 1,565 feet of the bridge proper?

Answer to twenty-fourth interrogatory. It would be $70,300.

Interrogatory twenty-fifth. What would a new structure have been worth at that time constructed upon modern lines?

Answer to twenty-fifth interrogatory. $96,000.

Interrogatory twenty-sixth. How long do experts estimate the life of a bridge to be, built of that character?

110 Answer to twenty-sixth interrogatory. Fifty years, more or less.

Interrogatory twenty-seventh. How long has that bridge been in use?

Answer to twenty-seventh interrogatory. It has been in use about twenty-three years. It was completed in 1871.

Interrogatory twenty-eighth. What per cent., then, of its life has been exhausted?

Answer to twenty-eig-th interrogatory. Well, I figure about half of it. I mean the iron construction. The stone is about as good as it used to be.

Interrogatory twenty-ninth. You figured the stone-work as new, then, throughout, and figured the iron-work at what it was actually worth when you saw it in 1894?

Answer to twenty-ninth interrogatory. A. Yes, sir.

Interrogatory thirtieth. And the figures that you gave was for

new work to be built upon the stone piers as they now stand, according to modern designs and of steel?

Answer to thirtieth interrogatory. A. Yes, sir.

Cross-examination:

Cross-interrogatory first. In your answers propounded by Mr. Cole you were covering the cost of the material, were you?

Answer to cross-interrogatory first. Yes, sir; in place.

Cross-interrogatory second. What city, if any, is located at the west end of what is known as the Keokuk and Hamilton bridge?

Answer to cross-interrogatory second. The city of Keokuk.

Cross-interrogatory third. About what is the size of that city?

Answer to cross-interrogatory third. I do not remember how many inhabitants. It is one of the biggest cities of Iowa.

Cross-interrogatory fourth. What city is located at the east end of said Hamilton bridge?

Answer to cross-interrogatory fourth. Hamilton.

Cross-interrogatory fifth. Over what river is this bridge?

Answer to cross-interrogatory 5th. Over the Mississippi river.

111 Cross-interrogatory sixth. For what is it used?

Answer to cross-interrogatory sixth. It is used as a railroad bridge, for wagons, passengers, and a bridge for pedestrians. It has two sidewalks.

Cross-interrogatory seventh. It is, as far as you know, the only way the people of Hamilton and Hancock county have of getting over the Mississippi river to Keokuk?

Answer to cross-interrogatory seventh. Yes; so far as I know.

Cross-interrogatory eighth. Do you know to what extent it is used by teams and carriages and people generally?

Answer to cross-interrogatory eighth. No.

Cross-interrogatory ninth. How many railroads cross this bridge?

Answer to cross-interrogatory ninth. Well, I think the Wabash and one other railroad—two railroads, so far as I know.

Cross-interrogatory tenth. Does the location of a bridge have anything to do with the value of the bridge as an investment?

Answer to cross-interrogatory tenth. Certainly.

Cross-interrogatory eleventh. In making your estimates of the cost of this bridge you did not add anything on account of location, business, or anything of that kind, did you?

Answer to cross-interrogatory eleventh. No, sir.

Cross-interrogatory twelfth. You know nothing about the income of the Keokuk and Hamilton Bridge Company, do you?

Answer to cross-interrogatory twelfth. No.

Cross-interrogatory thirteenth. I understood you to say that a bridge such as this built now on modern plans would cost $193,000?

Answer to cross interrogatory thirteenth. Yes, sir; about that, more or less.

Cross-interrogatory fourteenth. That is about the highest figure?

Answer to cross-interrogatory fourteenth. Yes.

Cross-interrogatory fifteenth. When you say that the life of a bridge is fifty years, I understood you to say that referred
112 alone to the iron-work?

Answer to cross-interrogatory fifteenth. Yes, sir.

Cross-interrogatory sixteenth. Do I understand you to say that the abutments or stone-work of the bridge was substantially as good as new?

Answer to cross-interrogatory sixteenth. Yes, sir.

Cross-interrogatory seventeenth. That also applies, does it not, to the approaches to the bridge?

Answer to cross-interrogatory seventeenth. In the approaches, fills, etc.

Cross-interrogatory eighteenth. Are the approaches not better, having stood there and settled down, than they were at first?

Answer to cross-interrogatory eighteenth. To some extent. The slopes have caved in a little bit and will have to be filled up after some little time.

Cross-interrogatory nineteenth. Would the fact that this bridge is located across the Mississippi river and between the county of Hancock and the city of Hamilton on the east and the city of Keokuk on the west add to or detract from the value of the bridge as an investment?

Answer to cross-interrogatory nineteenth. As an investment, I cannot tell.

Cross-interrogatory twentieth. Is this bridge *is* used largely by the people of Hancock county to cross over the river to Keokuk would that add anything to the value of the bridge?

Answer to cross-interrogatory twentieth. As an investment, certainly.

Cross-interrogatory twenty-first. Then, if I understand you correctly, the value of the bridge as such would depend to a large extent upon how much it was used and by whom used and the income derived therefrom?

Answer to cross-interrogatory twenty-first. It is a different kind for one man investing in this company and for another one
113 who wants to buy it. For a man who wants to invest he would want to know whether it was used much, but if a man is going to buy it, then he would find out how much a new construction would cost, and the cost of the new construction would be the highest value he would be willing to pay for it.

Cross-interrogatory twenty-second. Would not a man be willing to pay more for a bridge located as this bridge is than it would cost to build another bridge across the same river between the same points, and thereby prevent competition?

Answer to cross-interrogatory twenty-second. If he can prevent competition, then he would rather buy the old construction, if it is possible to prevent competition.

Cross-interrogatory twenty-third. Then, after all, the real value of such a bridge is largely determined by how much it is used, the location and surroundings of the bridge, is it not?

Answer to cross-interrogatory twenty-third. Certainly.

24. Do you know whether or not any of the iron-work of this bridge has been put in new since it was originally built?

Answer to cross-interrogatory twenty-fourth. Yes, sir; there has been one span built new; the old one was torn down by an accident.

Cross-interrogatory twenty-fifth. What span was that?

Answer to cross-interrogatory twenty-fifth. Well, the second or third span from the draw.

Cross-interrogatory twenty-sixth. East?

Answer to cross-interrogatory twenty-sixth. Second or third span east from the draw; I do not remember exactly.

Cross-interrogatory twenty-seventh. About when was that accident?

Answer to cross interrogatory twenty-seventh. I do not know; several years ago.

Cross-interrogatory twenty-eighth. Then that span would not have depreciated one-half, as the other spans have, as you figure?

114 Answer to cross-interrogatory twenty-eighth. Yes; but this span is on the side of the State of Iowa.

Cross-interrogatory twenty-ninth. That depends on where the line between Iowa and Illinois is, does it not?

Answer to cross-interrogatory twenty-ninth. Well, I do not remember exactly, but I believe it was in Iowa.

Cross-interrogatory thirtieth. If it is the second span east of the draw, then it is not contended by Illinois that it is in Illinois?

Answer to cross-interrogatory thirtieth. I could answer this by going to figures.

Cross-interrogatory thirty-first. Do you mean you can determine whether it is in Illinois or Iowa or whether it is the second or third span east of the draw?

Answer to cross-interrogatory thirty-first. The second span is in the large part, the longer, the 1,565 feet.

Cross-interrogatory thirty-second. You are not certain, however, whether it is included in the 1,565 feet claimed by Illinois or not?

Answer to cross-interrogatory thirty-second. No, sir.

Cross-interrogatory thirty-third. But if that span is in Illinois it has not depreciated to the same extent as the old part of the bridge, has it?

Answer to cross-interrogatory thirty-third. No, sir.

Cross-interrogatory thirty-fourth. But would only be depreciated, in your judgment, on the same ratio, according to years?

Answer to cross-interrogatory thirty-fourth. Yes, sir.

Redirect examination:

Redirect interrogatory first. Mr. Muller, if there was no city of Hamilton nor no city of Keokuk at either end of that bridge nor no railroads to cross that bridge, what would the bridge be worth?

Answer to redirect interrogatory first. It would be worth as much as old material.

115 Redirect interrogatory second. Then in your estimates you have figured it higher than old material and have taken into account that this traffic exists?

Answer to redirect interrogatory second. Yes, sir.

Redirect interrogatory third. So that the valuation you put upon the bridge is of a bridge in use with traffic coming to it of all character?

Answer to redirect interrogatory third. The costs I have given are the costs of a bridge put in there—in place there.

Redirect interrogatory fourth. How long do you estimate the life of the wood-work, floors, stringers, and the ties, upon that bridge?

Answer to redirect interrogatory fourth. About eight years.

Redirect interrogatory fifth. Do you know how long the wood-work of that bridge had been in use when you saw it in 1894?

Answer to redirect interrogatory fifth. I think about five years—four or five.

Redirect interrogatory sixth. Then what per cent. of the life of the wood-work was exhausted?

Answer to redirect interrogatory sixth. Fifty per cent.

Redirect interrogatory seventh. Do you know where the town of Warsaw, Illinois, is situated?

Answer to redirect interrogatory seven. No.

Redirect interrogatory eight. If the town of Warsaw, Ill., in the upper end of Hancock county, Illinois, had other means of crossing the Mississippi river besides that afforded by the bridge at Keokuk, Iowa, what effect would that have upon the value of the property?

Answer to redirect interrogatory eighth. I could not tell.

Redirect interrogatory ninth. How much of the old span that was carried out by the War Eagle is new iron or steel, Mr. Muller?

Answer to redirect interrogatory ninth. So far as I recollect, there are some parts of the old construction have cast iron and the new construction has no cast iron.

116 Redirect interrogatory tenth. What is the upper chord of this so-called new span?

Answer to redirect interrogatory tenth. I do not remember now.

Redirect interrogatory eleventh. What particular difference, then, do you state there is between this so-called new span and the old work as it exists?

Answer to redirect interrogatory eleventh. This new span has some improvements which will make the life of this span probably longer than the life of the old span.

Redirect interrogatory twelve. If the top and bottom chords, diagonals, columns, and all connections of this so-called new span were built from the old span after having been taken from the river, what value, then, would this new span have over the old spans still existing?

Answer to redirect interrogatory twelfth. Not much; it is hard to tell, but not much.

Redirect interrogatory thirteen. How many years longer would that span, then, probably be good for use over the other spans on either side of it, in your judgment?

Answer to redirect interrogatory thirteen. I could not tell.

Recross-examination:

Recross-interrogatory first. Do I understand you to say that the figures used by you as to the cost of this bridge are the costs of the material put in place and the bridge complete?

Answer to recross-interrogatory first. Yes, sir.

Recross-interrogatory second. And those figures you have given us as the total cost of the bridge are for the material and labor in putting it in place and completing it as a bridge?

Answer to recross-interrogatory second. The $193,000; yes, sir.

Recross-interrogatory third. That $193,000 is made up, is it not, entirely of material and the labor of putting it in place and completing it as a bridge?

117 Answer to recross-interrogatory third. Yes, sir.

Signature waived.
(See stipulation.)

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, Bryant C. Winston, of the city of St. Louis, State of Missouri, duly appointed to take the deposition of the said Charles F. Muller, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Charles F. Muller as a witness in the said suit between the said People of the State of Illinois, on the application of the collector of Hancock county for judgment on the tax-list, plaintiff, and the said The Keokuk and Hamilton Bridge Company, defendant, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said The People of the State of Illinois, etc., plaintiff, and the said Keokuk and Hamilton Bridge Company, defendant, so far as he should be interrogated concerning the same; that the said deposition was taken in the office of W. H. Blodgett, general solicitor of the Wabash Railroad Company, in the city of St. Louis and State of Missouri, on the 25th day of July, A. D. 1895, between the hours of ten o'clock a. m. and six o'clock p. m. of said day, and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto as written down were not read over to the said witness and the signature of said witness was waived by the stipulation of counsel hereto attached.

And the said deposition, together with said commission and notice given with stipulation, are hereby certified to said county court.

Given under my hand, at St. Louis, Missouri, this 25th day of July, A. D. 1895.

BRYANT C. WINSTON,
Commissioner.

118 The deposition of John A. Nicholls as follows:

In the County Court of Hancock County, Illinois.

In the Matter of the Application of the Collector of Hancock County, Illinois, for Judgment on the Tax-list, to the May Term, 1895.

No objection by the Keokuk & Hamilton Bridge Company to judgment.

And now, to wit, August 5th, 1895, in pursuance of a commission issued out of the county court of Hancock county, Illinois, directed to H. D. Gamble, commissioner, the taking of the depositions of witnesses named in said commission is proceeded with in pursuance of the notice hereto annexed.

J. H. Cole, Esq., appears for the Keokuk & Hamilton Bridge Company, and W. H. Hartzell, Esq., State's attorney, for Hancock county.

JOHN A. NICHOLLS, on the part of the defendant bridge company, is produced and sworn — deposes as follows:

Q. What is your name, age, and residence?
A. John A. Nicholls; sixty-four years; 245 Elm, Pittsburgh.
Q. What is your occupation, Mr. Nicholls?
A. Chief engineer of the Pittsburg Bridge Company.
Q. How long have you been engaged in bridge-building?
A. Since September 1st, 1870.
Q. What occupation did you follow previous to 1870?
A. Railroad master mechanic.
Q. With whom did you engage on September 1st, 1870?
A. Keystone Bridge Co.
Q. What office did you fill for the Keystone Bridge Co.?
A. I had exclusive charge of building the Illinois and St. Louis bridge.

Q. State whether you ever examined the plans in the office
119 of the Keystone Bridge Co. for the bridge erected at Keokuk, Iowa, across the Mississippi river.

Objected to by Mr. Hartzell. It is thereupon agreed that all objections that might be raised upon the examination of the witnesses shall be reserved until the hearing of the cause.

A. I did.
Q. What kind of a bridge was erected at that place from those plans?
A. What is known as a double-intersection Pratt truss.
Q. State as nearly as you can, Mr. Nicholls, what length of spans were built at the east end of said bridge, in the State of Illinois.
A. I don't think I can give from memory now the exact length of the different spans, but that the spans averaged 160 feet in length.
Q. State from your knowledge of the plans and building what was the probable weight per lineal foot of those spans.

A. The averaging up that way would, in my opinion, make it some 1,400 pounds per foot.

Q. For how much of the bridge?

A. For the long spans.

Q. How long were these long spans that you refer to?

A. My recollection don't serve me there.

Q. How much per lineal foot would be the average weight of these short spans of 160 feet that you have described?

A. 1,100 pounds.

Q. Of what material was the superstructure composed?

A. Iron.

Q. What kind of iron?

A. Wrought and cast.

Q. Of what material are bridges constructed today, Mr. Nicholls?

A. Iron and steel—that is, wrought iron and steel.

Q. Why has steel been brought into use in the building of bridges?

A. Principally on accounnt of its higher tensile strength, thereby requiring less material in weight and bulk.

120 Q. What weight or load was that bridge constructed to carry per lineal foot?

A. I don't recollect.

Q. What weight or load per lineal foot are bridges constructed at present required to carry for railroad purposes?

A. Three to four thousand pounds.

Q. What position did you hold on May 1st, 1894, with the Pittsburg Bridge Co.?

A. Chief engineer.

Q. In your judgment, what would have been a fair price for the superstructure on May 1st, 1894, of the old bridge at Keokuk, Iowa, which was erected in 1870?

A. In my opinion, a bridge in use for that length of time would deteri-ate in value thirty per cent.

Q. What would have been a fair price for a new steel bridge erected at Keokuk, Iowa, on May 1st, 1894?

A. 2½ cents per pound.

Q. How much would 961 feet of new bridge have been worth at that time, superstructure?

A. $33,685.

Q. How much more would a new steel structure of the weight that you have figured and which you have stated would be worth $33,685 have been than the old structure then in place?

A. Fifty per cent.

Q. Now, Mr. Nicholls, how much would 1,565 feet of that bridge have been worth if erected of new steel on May 1st, 1894?

A. A bridge of that same length, upon the same basis, would be worth $54,775.

Q. How much more would that new steel structure be worth on May 1st, 1894, than the old bridge was worth on May 1st, 1894?

A. Fifty per cent.

Cross-examination by Mr. HARTZELL:

Q. When was the first time you saw the Keokuk & Hamilton bridge?

A. I have no recollection of ever seeing it.

Q. So far, then, as you know, there is no bridge at all across the river at that point?

A. Yes, sir.

121 Q. What you saw was simply something that purported to be a plan of a bridge to be erected at that point?

A. I saw the drawings from which the bridge was built.

Q. You don't know whether the bridge was ever built or not, of your own knowledge?

A. I do not.

Q. Then what you have testified in regard to this bridge is simply representations that have been made to you by other persons?

A. No, sir.

Q. What is it, then, that you base your estimates on?

A. Upon the official drawings from which this bridge was represented to me as being built.

Q. Represented to you by whom?

A. Keystone Bridge Co.

Q. Whether or not the Keystone Bridge Co. knew what they were talking about you have no other means of knowing other than simply what they told you?

A. No.

Q. Then all of your evidence heretofore given in chief is based upon representations made to you by the Keystone Bridge Co. relative to certain plans which they claimed were the plans of the Keokuk & Hamilton bridge?

A. As far as the bridge being built by the Keystone Bridge Co., I would say yes.

Q. Have you examined this bridge at any time?

A. No.

Q. Then you don't know whether the bridge is built of iron or steel, do you, of your own knowledge?

A. Yes, sir.

Q. How do you know?

A. The Keystone Bridge Co. had not built a steel bridge and built of nothing but iron up to 1870.

Q. But don't you know of your own knowledge that the Keystone Bridge Co. built this bridge, do you?

A. No, sir.

Q. Then the present bridge may be of steel, for all you know, may it not?

A. I say, if that bridge was built by the Keystone Bridge Co., it was built of iron.

Q. Do you know what that bridge cost when new?

122 A. I never saw the figures.

Q. Did you see the plans and specifications?

A. I saw the plans; am not positive about seeing the specifications.

Q. Did the plans state what material was to go into the bridge?
A. I can't say from recollection.
Q. Do you know how many tons of iron there is in the old bridge?
A. I do not.
Q. Do you know what the length of the bridge is?
A. I do not recollect the exact length.
Q. Do you know the number of spans?
A. No, sir.
Q. Do you know the length of any one span?
A. About 160 feet.
Q. How many spans are there 160 feet long?
A. I can't say.
Q. Are the other spans longer or shorter than 160 feet?
A. There are one or two spans longer and there are some shorter, to the best of my recollection.
Q. The estimate that you gave Mr. Cole of $54,775, being the cost of the superstructure of 1,565 feet of the bridge, does that make up the total value of the bridge for 1,565 feet thereof?
A. That is for the superstructure only.
Q. There are other items, then, that enter into the cost of building the bridge, are there not?
A. The substructure.
Q. The estimate which you have given, then, is simply for the cost of placing the iron or steel in place, is it not, and includes nothing more?
A. Yes, sir.
Q. Do you know what the fair market price of the present bridge was on the first day of May, 1894? By that I mean what it would sell for at a fair voluntary sale.
A. I do not.
Q. You never have examined the bridge personally?
A. No, sir.
Q. And do not know the location of it?
A. No, sir.
Q. Do you know what the substructure is composed of?
A. I do not.

123 Q. All that you pretend to testify in regard to it — what a certain bridge which the Keystone Bridge Co. claimed to have built or were to build for the Keokuk & Hamilton Bridge Co. at Keokuk, Iowa, would cost, estimated from the plan which you saw in the office of said company?
A. Yes, sir.

(Signed) JOHN A. NICHOLLS.

The deposition of Nathaniel H. Bartlett as follows:

NATHANIEL H. BARTLETT, the witness named in said commission, having been by me as such commissioner duly sworn to tell the truth, the whole truth, and nothing but the truth, did testify and depose as follows, to wit:

Q. Give your name, age, and residence, Mr. Bartlett.

A. My name is Nat. H. Bartlett; my age, seventy-two; residence, city of Hudson, State of Wisconsin.

Q. State in what year you resided in Hancock county, State of Illinois.

A. From 1853 or 1854 until 1857.

Q. What business were you engaged in at that time, Mr. Bartlett?

A. Building.

Q. State at what time, if any, you were engaged on the Mississippi river, and in what employment.

A. I ran more or less on the river as a raftsman before that time, as early as 1846; a portion of the time as ferryman running flat-boats.

Objected to by collector as not being responsive to the question and as being immaterial.

124 Q. Describe the character of the ferry-boats that you assisted to operate across the river between Keokuk, Iowa, and Hamilton, Ill.

A. Large steam ferry-boats.

Q. At what stages of the water did you operate these boats, Mr. Bartlett?

Objected — as being immaterial.

A. But little, and that in high water.

Q. Where did you find landings for these boats at Hamilton, Ill.?

Objected — as being immaterial.

A. In extreme high water at the main shore.

Q. At what point on the main shore in Hamilton?

A. 30 rods below Dickinson's mill or just below the old frame bridge.

Q. What old frame bridge do you refer to?

A. To a bridge that stood at that time about 25 rods below the mill.

Q. What body of water did this bridge cross?

A. A natural slough of the Mississippi river.

Q. By what name was this slough known?

A. As the slough.

Q. What other building of a semi-public character was located upon that slough below the landing that you described?

A. A pork-house.

Q. Describe the geography of the country or the country lying between the slough and the river proper.

Objected to as being immaterial.

A. It consisted of low islands lapping onto one another.
Q. How many of these islands were there?
A. As many as four. I don't know whether more.
Q. How were these islands divided, Mr. Bartlett?

Objected to as being immaterial.

A. Divided by running water.
Q. Into how many of these sloughs have you run the ferry-boat you mentioned?

Objected to as being immaterial.

A. We entered from the main river into sloughs until we reached the main-shore slough, then up it to the landing.

125 Q. State whether or not you saw other steamboats enter Hamilton slough.

Objected to as immaterial.

A. I cannot say with certainty.
Q. State whether or not you ever saw a steamboat at the landing near the pork-house you have described.

Objected — as immaterial.

A. The steam ferry-boat landed there.
Q. How was the product of this pork-house shipped?

Objected to as being immaterial.

A. I am unable to say, as the use of it was discontinued about the time I moved there.
Q. Where did you land the ferry in Keokuk, Iowa?

Objected — as immaterial.

A. Near the foot of Main street.
Q. What course did you take from the landing at Keokuk, Iowa, to the landing at Hamilton, Illinois?

Objected to as immaterial.

A. In going to the Hamilton landing in the slough, went near a half a mile down the river, entering the sloughs there, working up the sloughs to the landing on the main shore.
Q. What other landings were made upon the Illinois shore except the landing upon the main shore that you have described?

Objected — as immaterial.

A. At various places on the islands from a half a mile below the stone bridge at the head of the outside island towards the river to a half a mile above the same point.
Q. Locate the stone bridge that you refer to in this answer.
A. It is within a few rods of the upper end of the island furthest out into the river.
Q. What was this bridge built for?

Objected to as being immaterial.

A. A road to get out to the ferry landing.

Q. Where did this road start in Hamilton, and what direction did it run?

Objected — as immaterial.

A. It started from about 25 rods below the mill above de-
126 scribed, ran about directly west across the island to the stone bridge or dam. After this dam was built the road led down the river to the ferry that landed at various points according to the stage of the water.

Q. Comparing the stage of water along the front of this island where these various ferry landings were made, how was it as compared to the stage of water where the landing was made at Keokuk?

Objected — as immaterial.

A. The water up near the head of this island at this stone dam in low water was so shallow as to leave a naked sand bar for considerable distance below that point, the water growing deeper as you went down the river, it being near a half a mile to where large steamboats could land in extreme low water.

Q. Can you locate the Keokuk and Hamilton bridge at the crossing of the Mississippi river?

A. Not accurately. I should think it about a third of a mile below this stone dam.

Q. What obst-uction to navigation was found in the Mississippi river running in a northerly direction from Keokuk, Iowa?

Objected to as immaterial.

A. The Des Moines rapids or the lower rapids in the Mississippi river.

Q. At what stage of water were those rapids navigable by ordinary steamboats; or, in other words, with the loaded steamboats that reached the Keokuk landing?

Objected to as immaterial and having no tendency to fix the navigable channel of the Mississippi river ordinarily used by steamboats.

A. Loaded steamers could not go over the rapids, their cargoes being put onto lighters and taken over.

Q. At times when steamers could not cross the rapids, how many times per day did the ferry-boats cross from Keokuk, Iowa, to Hamilton, Ill.?

Objected to as having no tendency to fix the navigable channel of the Mississippi river.

127 A. I should say from 8 to 15 times.

Q. State whether or not at this low stage of the water when steamers could not cross the rapids—whether steamboats landing at Keokuk crossed the river at the landing at Hamilton, Ill.

Objected to as the same reason to the last interrogatory.

A. No, sir; they didn't.

Q. Describe the general character of the river bed from a point half a mile above the foot of Main street, in Keokuk, Iowa, to the foot of Main street, Keokuk, Iowa?

Objected to as same as last interrogatory.

A. Good navigable water until you get over towards the Illinois shore. I am not able to tell you what the river bed is.

Q. In your judgment, what was the effect of building the stone bridge that you have described and the building of the highway or dike across the highway leading to the ferry landing?

Objected to for the reason that the proper foundation has not been laid.

A. I don't think it produced any perceptible effect upon the river, except to change the course of a cut-off between the islands three-quarters of a mile below from down river drawing up river.

Q. What is the general effect of throwing out a wing dam from any portion of a main shore?

Objected to as being immaterial.

A. My judgment is it would have a tendency to wash out the bottom, if it was not stone, at the outward end of the wing dam.

Q. What would be the general effect upon the stage of the water on the other shore opposite this wing dam?

A. It would depend upon the length of the wing dam as to how near it approached the opposite shore. Its general tendency would be to deepen the water.

Q. What difference is there between a wing dam, so called, and the dike or road to the ferry closing up the slough between the islands by the stone bridge you have described?

128 A. I could see no perceptible difference.

Cross-examination by Mr. HALBOWER:

Q. How long have you resided in Hudson?

A. 38 years, with the exception of a few years at different times in Kansas, State of Washington, and Illinois.

Q. Was you ever a pilot and engaged in the steamboat traffic up and down the Mississippi river?

A. No, sir.

Q. You do not pretend, then, to be acquainted with the steamboat channel, or that channel usually followed by steamboats in carrying traffic up and down the Mississippi river?

A. Not suitable to have a license as a pilot; am acquainted in many places with the channel, having had a good deal of experience with rafts and flat-boats, also having traveled quite extensively on steamboats.

Q. What is your present occupation?

A. Builder of houses, carpenter, and joiner.

Q. How long have you been engaged in that business?

A. About 48 years.

Q. How long was you engaged in the ferry and rafting business that you speak of?

A. The terms that I was engaged in that were not all consecutive, but would extend from time to time for 20 years.

Q. Are you acquainted with the Keokuk & Hamilton bridge?

A. I know of it, having crossed it numerous times and navigated boats under it.

Q. Do you know where Dominion rock, in the Mississippi river, is situated with reference to this bridge?

Objected to by Mr. Cole as not being proper cross-examination.

A. I don't know where Dominion rock is. I have often heard of it.

Q. Do you know upon which side of Dominion rock steamboats, in navigating the Mississippi river, ordinarily pass?

Objected to as not being cross-examination.

129 A. No, sir.

Q. Are you acquainted with the steamboat channel, or the channel usually followed by steamboats in carrying on commerce up and down the Mississippi river at the Keokuk & Hamilton bridge?

Same objection.

A. Why, the water was deep enough all along the western bank or quite across the river.

Q. In low-water stages what channel at this bridge did the steamboats follow?

Objected to because the witness has not shown any knowledge of the location of the bridge and as not proper cross-examination.

A. They usually went a third of a mile from the western shore.

Q. Are you acquainted with the draw-span of that bridge?

A. Haven't seen it for 15 years.

Q. Do you know how near to the draw-span steamboats usually pass in going up and down the Mississippi river?

A. I suppose it would have to pass through the span.

Testimony closed.

(Signed) NATHANIEL H. BARTLETT.

The deposition of J. H. TRAVIS, as follows:

Interrogatory 1. What is your name, age, and residence?

A. J. H. Travis; 45; Chicago, Ill.

Q. What is your occupation, Mr. Travis?

A. Superintendent of bridges, buildings, and water service of the Illinois Central R. R.

Q. How long have you been thus employed?

A. Three years.

Q. In what business were you engaged previous to that time?

A. In the same business with the Wabash R. R. and other rail-

roads from 1879; from '68 until '79 with the Keystone Bridge Co.

130 Q. What bridges of importance across the Mississippi river were built by the Keystone Bridge Co. during the period you mention?

A. Dubuque, Keokuk, and St. Louis.

Q. Are you acquainted with the structure at Keokuk, Iowa, across the Mississippi river?

A. Yes, sir; I was connected with its construction.

Q. In what year was that bridge erected?

A. I think it was in May or June, 1870.

Q. What type of bridge is that known as among bridgemen?

A. It is a Linville and Piper patent truss, and is known among bridge-builders as a double-intersection Pratt truss.

Q. Of what material is the superstructure composed?

A. Principally wrought iron.

Q. What is the length of the spans commencing at the eastern end, as you remember them, Mr. Travis?

A. About 156 to 160 feet, as I remember it.

Q. How many of these short spans are there?

A. I think there is eight or nine; I am not sure.

Q. How many long or raft spans?

A. Two.

Q. About how long are those raft spans?

A. To my recollection, about 258 feet.

Q. How long is the draw or pivot span to the bridge?

A. Between 380 and 387 feet. I don't know exactly.

Q. About what weight were the short spans per lineal foot?

A. I should say between about 1,000 and 1,100 pounds.

Q. About what weight did the long spans weigh per lineal foot?

A. About 1,200 pounds to the lineal foot.

Q. How much per ton would the iron superstructure of that bridge have been worth on May 1st, 1894?

A. Well, I should say about $22 to $25 per ton.

Q. How much would new material have been worth then, Mr. Travis?

A. About $42 to $45.

Q. Upon what facts do you base the value of new material on May 1st, 1894?

131 A. The prices that have been paid for material for bridge construction at about that time.

Q. Upon the basis of price that you have named, $25 per ton, how much would 961 feet of the superstructure of that bridge have been worth on May 1st, 1894?

A. About $12,500.

Q. Of what is the east approach of that bridge composed?

A. The east approach to that bridge is composed of earth-work filling, retaining wall, and riprap.

Q. What would you estimate that approach to have been worth on the 1st of May, 1894?

A. I should say that it would cost probably between $7,000 and $8,000, at a rough estimate.

Q. In your judgment as an expert, what was the east abutment worth on the 1st day of May, 1894?

A. Well, I should say $6,500.

Q. How many piers are necessary to carry the 961 feet?

A. It would require about six piers.

Q. In your judgment, what were those piers worth on May 1st, 1894?

A. Not having the exact demensions of the piers, I should judge there were between 360 and 375 yards in one of those piers, and they would be worth about $3,500 to $3,700 each, making $22,200.

Q. If the floor structure and timber of that bridge had been in use for four years, how much was the floor structure and timber worth per lineal foot on May 1st, 1894?

A. It would be worth about fifty per cent. of its actual cost.

Q. If the actual cost per lineal foot was $8 per foot, how much, then, would 961 feet of floor of that bridge have been worth on May 1st, 1894?

A. $3,844.

—. You have stated the value of the iron in 961 feet to be $12,500; the value of the east approach, $8,000; the value of east abutment, $6,500; the value of the six piers under 961 feet, $22,600; the value of the timber *con*structure upon 961 feet to be $3,844. How much does that make the total worth of 961 feet of that bridge and the east approach upon May 1st, 1894?

132 A. $55,044.

Q. How much would 1,565 feet of that bridge have been worth on May 1st, 1894, upon the same basis?

A. $88,724.

Q. What would your estimate be upon the value of the whole bridge as it existed on May 1st, 1894, including approaches in both Iowa and Illinois, protection piers at the draw span, and everything pertaining to the bridge proper across the river?

A. I think that $160,000.

Q. What railroad crossed this bridge, Mr. Travis?

A. The Wabash and the T., P. & W.

Q. What part of the Wabash?

A. I think it was called the Clayton branch.

Q. State, if you can, about what tonnage these railroads handled across this bridge, both east and west.

A. I am not able to answer that question.

Q. With your knowle-ge of this bridge, the time it has been built, the railroads using it, and every other factor entering into its value, what, in your opinion, would have been the fair cash value of the whole property on May 1st, 1894?

A. Say from $160,000 to $175,000.

Cross-examination:

Q. How many years has it been since you saw this bridge?

A. Well, I made a personal examination of the structure all over in 1885.

Q. Have you seen it since that date?
A. I have seen it, but not to make any inspection of it.
Q. When was the last time you saw it?
A. Well, I think the last time I crossed the Keokuk bridge was in 1891 or '92; I am not sure about that.
Q. And you made no examination at that time?
A. No, sir.
Q. Do you know what the original cost of that bridge was?
A. No, sir.
133 Q. You told Mr. Cole that the value of this bridge was from $160,000 to $175,000; how many feet of the bridge in excess of the 1,565 feet are there?
A. Well, I would only have to guess at that question.
Q. Give your best guess.
A. If my recollection of the length of the spans and the number is correct, there would be 510 ft.
Q. Is this 510 feet any more expensive to build per running foot than the 1,565 feet about which you have testified?
A. Well, no; not a great deal.
Q. Would you say about the same?
A. Well, the same general proportion.
Q. Then about one fourth of the value of the bridge—that is, $160,000 or $175,000—is in the 510 feet?
A. About whatever the figures show is the proportion.
Q. Then it would be in the ratio of 510 to 1,565?
A. About the same.
Q. Do you pretend to give an estimate at what this bridge would sell for at a fair voluntary sale if put upon the market and sold?
A. No, sir; estimating it as to its relative value and comparing its cost to that of a new bridge in 1894.
Q. You do not know, then, what this bridge's fair market value is?
A. No; I could not answer that question.
Q. All you undertake to give is what the material, etc., entering into its construction would cost?
A. Yes, sir; that is about the way I have based my figures.
Q. In your estimates above you have deducted for wear and tear?
A. Yes, sir.
Q How much has the stone-work depreciated in value since the bridge was bu*lt*?
A. Well, the depreciation in masonry would be probably ten per cent.
Q. Have you had some talk with Mr. Cole in regard to the price of iron prior to testifying?
A. Yes, sir.
134 Q. Where was that conversation?
A. At my office, in Chicago.
Q. Your testimony is then based upon the condition of this bridge as detailed to you by Mr. Cole; is that it?
A. No, sir.
Q. How about the length of the bridge?
A. As to its length, I have to answer from memory, not having

the exact figures before me and have not had for several years. I might make a mistake of one span in there or the length of a span.

Q. Did Mr. Cole tell you anything about the length of the bridge?

A. No; I think he asked me if I remembered the length of the span on the Illinois shore. As I recollect it, it was about 158 to 160 feet.

Q. Was there something said about prices at that time?

A. Yes.

Q. Something said about the value of the bridge?

A. Yes.

Q. You told him you knew what the value was, did you?

A. No, sir; I did not.

Q. Did he tell you what its value was?

A. No, sir; he did not.

Q. You might have forgotten to put in one span of this bridge in your estimate?

A. I might have done so, but I do not think I did.

Q. You did not forget to figure the value of the draw span, did you?

A. No, sir.

Q. Have you figured everything as you now remember it?

A. Yes, sir.

Q. And the cost of the bridge—that is, 2,075'—was from $160,000 to $175,000?

A. That is the estimated cost.

Redirect examination:

Q. Mr. Travis, if the total length of this bridge is 2,192 feet, how much would there be left after deducting 1,565 feet?

A. There would be 627 feet.

Q. If that 627 feet is upon the Iowa end of the bridge, what will it include?

A. It will include the pivot span and the first raft span, or a portion of the first raft span.

Q. How much more per lineal foot is the pivot span worth than the short span on the Illinois shore?

A. In the neighborhood of one-third more.

135 Q. If one-third more, then how many feet of short span would it take to equal 380 feet of the draw span?

A. It would take about 503 or 504 feet.

Q. How much more per lineal foot are the raft spans worth than the short spans on the Illinois side?

A. Well, I believe I estimated that at nearly one-quarter more.

Q. How many feet, then, of the short spans on the Illinois shore would it require to equal 247 feet of the raft span?

A. About 309 feet.

Q. How much does 503 and 309 feet make?

A. 812 feet.

Q. Then in dividing the cost of the bridge or its value, as you have stated, it would be proper to divide upon the proportion of 812 feet would have to 1,565 feet?

A. About the same proportion.
Q. In round numbers, what would be the proportion?
A. A little more than one-half.
Q. What, then, would be the proportion for the 812 feet in the total estimate of 1,565 feet?
A. Probably about $82,000.

Recross-examination:

Q. The last estimates you have made are made upon the basis that the bridge is as long as Mr. Cole said it was and not upon the length as you remember it and as you told me in your cross-examination?
A. Yes, sir; that is on Mr. Cole's figures?
Q. And upon Mr. Cole's figures alone?
A. Yes; I did not compare the figures given me by Mr. Cole.
Q. They are Mr. Cole's estimates and not yours?
A. Yes, as to length.
Q. Your estimates, as given me in your cross-examination, were correct as to your own recollection?
A. Yes, sir; as to my recollection.
Q. The last estimates which you give in redirect examination by Mr. Cole were placed entirely upon his representations to you as to the length of the bridge?
A. Yes, sir.
(Signed) JAS. H. TRAVIS.

136 The deposition of John Menz as follows:

Interrogatories propounded to said JOHN MENZ, as witness produced and sworn as aforesaid on the part of the said Keokuk & Hamilton Bridge Co., and his answers thereto, as follows:

Interrogatory 1. What is your name?
Answer one. John Menz.
Int. 2. Where do you live?
Ans. 2. I live in Keokuk.
Int. 3. What official position do you fill, Mr. Menz?
Ans. 3. I am deputy county treasurer of Lee Co.
Int. 4. Where is your office located, Mr. Menz?
Ans. —. Keokuk, Iowa.
Int. 5. What are your duties as deputy county treasurer of Lee Co.?
Ans. —. To collect State and county taxes.
Int. 6. For what part of Lee county do you collect taxes?
Ans. 6. For the lower district of Lee Co., which includes the city of Keokuk and other townships.
Int. 7. State what taxes have been paid you by the Keokuk & Hamilton Bridge Co. for the year 1894.
Ans. 7. There was $705 paid for the first half of 1894.
Int. 8. What other taxes are due for the year 1894, for State and county purposes, from the Keokuk & Hamilton Bridge Co.?

Ans. 8. There are due $705, which will become delinquent on the 1st day of Oct., 1895.

Int. 9. In the description of the property assessed, upon which you make this collection, how many feet of the bridge proper are assessed?

Ans. 9. About 1,100 feet.

No cross-examination.

(Signed) JOHN MENZ.

137 The deposition of J. G. Garretson as follows:

Interrogatories propounded to the said J. G. GARRETSON, a witness produced and sworn as aforesaid on the part of the said Keokuk & Hamilton Bridge Co., and his answers thereto, as follows:

Interrogatory 1. What is your name?

Ans. 1. J. G. Garretson.

Int. 2. Where do you reside?

Ans. 2. In Keokuk.

Int. 3. What official position did you fill in the year 1894 in Keokuk, Mr. Garretson?

Ans. 3. City collector of the city of Keokuk.

Int. 4. State what taxes were paid you for the year 1894 by the Keokuk and Hamilton Bridge Co.?

Ans. 4. $1,500, which was the total amount of taxes due from that Co. for the year 1894.

Int. 5. What was the total assessment for that year, Mr. Garretson, upon which you collected taxes?

Ans. 5. Seventy-five thousand dollars.

Int. 6. How many feet of the bridge proper were included in the description of the assessment upon which these taxes were collected?

Ans. 6. Stated at 1,090 ft.

No cross-examination.

(Signed) J. G. GARRETSON.

The deposition of A. Hoagland as follows:

Interrogatories propounded to the said A. HOAGLAND, a witness produced and sworn as aforesaid on the part of the said Keokuk & Hamilton Bridge Co., and his answers thereto, as follows:

Interrogatory 1. What is your name?

Ans. 1. A. Hoagland.

Int. 2. Where do you reside?

Ans. 2. I reside in Keokuk.

138 Int. 3. What official position did you fill in Keokuk for the year 1894?

Ans. 3. I was assessor for city, State, and county purposes.

Int. 4. Did you assess the property of the Keokuk & Hamilton Bridge Co. for that year?

Ans. 4. I did.

Int. 5. How much of the bridge proper did you assess for city purposes for the year 1894?

Ans. 5. About 1,090 ft.

Int. 7. How much of the bridge proper did you assess for State and county purposes for the year 1894?

Ans. 7. About 1,090 ft.

Int. 8. What other property belonging to the Keokuk & Hamilton Bridge Co. did you assess for that year?

Ans. 8. The road-bed, right of way, embankment, abutments, and everything pertaining to that portion of said bridge lying within the State of Iowa.

Int. 9. What was your assessment on all that property for the year 1894?

Ans. 9. Assessed in 1893 for $50,000, and the same held good for 1894.

Int. 10. What was your assessment on all that property for city purposes for the year 1894?

Ans. 10. Seventy-five thousand dollars.

Int. 11. In assessing for State and county purposes what per cent. of the fair cash value of the property did you fix in your assessment for the city of Keokuk?

A. —. Fifty per cent.

Int. 12. In assessing for city purposes what per cent. of the fair cash value did you fix in your assessment for the city of Keokuk?

Ans. 12. About two-thirds.

No cross-examination.

(Signed) A. HOAGLAND.

139 The deposition of James B. Diver, as follows:

Interrogatories propounded to said JAMES B. DIVER, a witness produced and sworn as aforesaid on the part of the said Keokuk & Hamilton Bridge Co., and his answers thereto, as follows:

Interrogatory 1. What is your name?

Ans. —. James B. Diver.

Int. 2. Where do you reside?

Ans. 2. In Keokuk, Iowa.

Int. 3. What business are you engaged in, Mr. Diver?

Ans. 4. Bridge business.

Int. 4. What do you mean by the bridge business?

Ans. 4. Contracting and construction of iron and steel bridges.

Int. 5. How long have you been engaged in that business?

Ans. 5. About fourteen years.

Int. 6. Are you acquainted with the construction of the Keokuk & Hamilton bridge?

Ans. 7. Yes.

Int. 8. Please describe the structure known as the Keokuk & Hamilton bridge.

Ans. 8. The spans are what is known as double intersection trusses, with thread and nut connections for all diagonals passing

through top chords. The material used in the construction of the bridge was known at the time as double-rolled wrought iron. The type of the bridge is one that is not used at present in bridge construction.

Int. 9. How long has that bridge been in use?

Ans. 9. I should say about twenty-five years.

Int. 9. What part of the actual life of that bridge has, then, expired?

Ans. 9. My opinion as an expert is that from 40 % to 50 % of the life of that bridge has expired.

Int. 10. In — opinion, Mr. Diver, what was the safe rolling load of that bridge at the time it was built?

Ans. 10. About 2,000 pounds per lineal foot.

Int. 11. At present, as bridges are constructed, what is the material most employed?

Ans. 11. Steel.

Int. 12. How much load per lineal foot are railroads required for single-track bridges?

140 Ans. 12. About 4,000 pounds per lineal foot.

Int. 13. Please state what structure of steel such as is used in bridges was worth on May 1st, 1894, erected and in place.

Ans. 13. About $3.50 per hundred pounds.

Int. 14. At that same date, May 1st, 1894, what was the iron in the Keokuk & Hamilton bridge worth per hundred pounds?

Ans. 14. The real value of the metal would be governed by the market price of scrap iron, which at that time was worth $8 to $10 per ton.

Int. 15. Are you acquainted with the substructure as well as the superstructure of that bridge, Mr. Diver?

Ans. —. Yes; it rests on stone piers and abutments.

Int. 16. Now, Mr. Diver, as an expert, what would you consider as a fair cash value of 1,565 feet of that bridge, with its piers and abutments, on May 1st, 1894?

Ans. 16. $76,000.

Int. 17. In your opinion as an expert, what would 700 ft. of embankment forming the east approach be worth May 1st, 1894?

Ans. 17. $6,500.

Int. 18. Have you made any other estimates for bridges across the Mississippi, at Keokuk, Iowa, during the past year?

Ans. 18. I have.

Int. 19. Describe briefly the character of bridge upon which you made this estimate and for whom.

Ans. 19. I made estimate for Mr. Hubbinger for a steel bridge, railroad and highway combined, double track for railroad purposes and for highway as well, 40 ft. wide, with a total length of 6,600 ft., of which 3,000 ft. was steel and 3,600 ft. wooden trestle.

Int. 20. What estimate did you place upon this structure, Mr. Diver?

Ans. 20. The estimate made for Mr. Hubbinger was for a high, level bridge, about $400,000.

141 Int. 21. What load was this bridge figured to carry, Mr. Diver?

Ans. 21. About 3,600 lbs. per lineal ft.

Cross-examination:

Int. 1. Are you acquainted with the fair market value of the bridge, which is the property of Keokuk & Hamilton Bridge Co., situated between the city of Keokuk and the city of Hamilton, being the same property that is described by the assessor of Montebello township, Hancock Co., Ills., for the year 1894?

Ans. 1. I am.

Int. 2. What do you mean by a fair cash value of this bridge?

Ans. 2. I mean the value of the metal that is in the bridge.

Int. 3. Then, you do not mean what it would sell for at a fair voluntary sale?

Ans. 3. No, sir.

Int. 4. Have you any opinion as to what this bridge would sell for at a fair voluntary sale?

Ans. 4. I have none.

Int. 5. Would it be worth simply the metal and labor and material placed in the structure?

Ans. 5. ——.

Int. 6. Does the location of the bridge add any value to it?

Ans. —. I would think so.

Int. 7. Does the fact that there are 2 railroads passing over the bridge add any value to it?

Ans. —. I would think so.

Int. 8. Then the $76,000 value for 1,565 ft. of this bridge is not the only value that the bridge has?

Ans. 8. Those figures were based entirely upon the value of the labor and material and not upon what the bridge would sell for.

Int. 9. You do not pretend to say, then, what the fair market value of this bridge is?

Ans. 9. I do not.

Redirect examination:

Int. 1. Mr. Diver, Mr. Hartzell asked you if you were acquainted with the fair market value of this bridge and you answered, I am. Now, then, in the answers which you made in the examination in which you gave as a fair cash value of 1,565 ft. of that bridge
142 with its piers and abutments on May 1st, 1894, as $76,000. In forming that estimate, Mr. Diver, what value did you place on the old iron on that bridge?

Ans. 1. $50 per ton.

Int. 2. Was the old iron actually worth $50 per ton at that time?

Ans. 2. It was not.

Int. 3. Then that estimate of $76,000 included something beside the fair cash value of the material erected in place?

Ans. 3. The matter of location and the fact that it was a bridge open for traffic was taken into account in the estimate of its value.

Int. 5. Do you know of other franchises for the erection of bridges across the river at Keokuk?

Ans. 5. There is a charter for another bridge.

Int. 6. What, then, is the actual value of a franchise or a charter for a bridge across the Mississippi river at Keokuk worth?

Ans. 6. It has no value.

Recross examination:

Int. 1. How much of the $76,000 did you allow for location?

Ans. 1. $15,300.

Int. 2. How much is the iron in that bridge worth?

Ans. 2. $45,000.

Int. 3. How much for the labor in the bridge?

Ans. 3. $18,000.

Int. 4. How much did you allow for the fact that the bridge was open for travel?

Ans. 4. That was considered in the matter of location.

Int. 5. Do you mean to say that $15,300 is all that the location of that bridge is worth?

Ans. 5. I do not know.

Int. 6. Then you do not know at all what the location is worth?

Ans. 6. I do not.

143 Int. 7. Can you buy the iron for the same figure that you placed on it?

Ans. 7. I could not buy new material for that.

Int. 8. Is there any steel in that bridge?

Ans. 8. No.

Int. 9. Have you ever examined this bridge with a view of being a witness?

Ans. 9. No.

Int. 10. How do you know how many tons of iron there are in this bridge?

Ans. 10. I know by hearsay.

Int. 11. You do not know from any computations you made yourself?

Ans. 11. We have analyzed the spans, measured every span in the structure.

Int. 12. Do you know what the Santa Fe people offered for this bridge?

Ans. 12. I do not.

Int. 13. Did you ever hear Mr. Cole, the supt. of the bridge Co., say?

Ans. 13. No; I never did.

Int. 14. Did you ever hear any one in authority in the bridge Co. say what the Santa Fe people would give for the bridge?

Ans. 14. I never did.

Int. 15. What, in your opinion, would that bridge sell for at a fair voluntary sale?

Ans. 15. I am unable to say.

Int. 16. In your opinion, would it bring more than the estimate you have placed on it?

Ans. 16. I am unable to say.

Int. 17. Do you know anything at all about it?

Ans. 17. I know nothing about what it would sell for.

Int. 18. Then your estimates of the value of this bridge are not based upon what it would sell for at a fair voluntary sale?

Ans. 18. They are not based upon any sale of any kind.

Re-examination:

Int. 1. You stated, Mr. Diver, that in your estimate of $76,000 as a fair cash value of 1,565 ft. of that bridge that you included $15,300 for location, etc. What correction do you wish to make in that statement?

144 Ans. 1. It should be corrected to $13,500.

Int. 2. Mr. Hartzell also asked what was the value of the iron in that bridge. Did the price you gave him mean the price of new material or the old iron?

Ans. 2. My estimate was based on old material.

Int. 3. Please state again the actual value of the old iron in the bridge.

Ans. 3. $15 per ton.

(Signed) JAMES B. DIVER.

William S. Sample as follows:

Interrogatories propounded to the said WILLIAM S. SAMPLE, a witness produced and sworn as aforesaid on the part of the said Keokuk & Hamilton Bridge Co., and his answers thereto, as follows:

Interrogatory 1. What is your name?

Ans. 1. W. S. Sample.

Int. 2. Where do you reside?

Ans. 2. I reside in Keokuk.

Int. 3. How long have you lived in Keokuk, Mr. Sample?

Ans. 3. I have lived there 45 years.

Int. 4. What connection did you have with the navigation on the river prior to 1871?

Ans. 4. Since my early boyhood my father had been associated with others in a ferry at Keokuk.

Int. 5. What interest did you have in ferrying or other business on the Mississippi river at Keokuk?

Ans. 5. I was secretary of the ferry Co. and we had a good deal of boating beside the ferrying.

Int. 6. What knowledge did you gain of the river between Keokuk, Iowa, and Hamilton, Ills.?

Ans. 6. A general knowledge of the river as to stage of water.

145 Int. 7. What knowledge did you gain as to the bed of the river or formation of the bottom between Keokuk and Hamilton?

Ans. 7. Between the two towns on the north it has a rock bottom,

shallow, verging off into deeper water opposite Hamilton or just above Keokuk.

Int. 8. Taking the low water of 1864 as a standard, about what stage of water would be found on the line of what is now the Keokuk and Hamilton bridge crossing the river?

Ans. 8. Very near the line of the present bridge we ferried all that season of 1864 and there was no difficulty between the landings.

Int. 9. Was there any perceptible difference in the stage of water passing from one shore to the other on that line?

Ans. 9. None observable where we did our business with our boat, which was a large class of boat.

Int. 10. Where was the old Hamilton warehouse located? Locate it as nearly as you can.

Ans. 10. It was built near the end of the dike and extended west from what is known as the slough bridge and near where the ferry-boat landed prior to the building of the bridge.

Int. 11. How far from where the present dike turns south would that be, Mr. Sample?

Ans. 11. Very near where the present dike turns south.

Int. 12. Whereabouts was the landing for the ferry-boat and other steamboats receiving and discharging freight for the Wabash R. R. on the Ills. shore?

Ans. 12. Just north or above the present approach to the bridge.

Int. 13. In ferrying backwards and forwards between Keokuk and Hamilton, what stage of water did you find at these places as compared with that on the Iowa shore?

146 Ans. 13. A good stage of water for business equal to that on the Iowa shore.

Int. 14. Was the canal opened for business at this time, 1864?

Ans. 14. It was not.

Int. 15. How was the business of the river then carried on over what is known as the Des Moines rapids?

Ans. 15. With flat-boats or lighters.

Int. 16. How were the lighters moved or propelled?

Ans. 16. In extreme low water they were towed with horses.

Int. 17. When these lighters were towed by horses over the rapids how was the ferry-boat propelled between Keokuk and Hamilton?

Ans. 17. By a steam ferry.

Int. 18. Then the stage of the water on the line used by the ferry was a better one than was found north on the rapids?

Ans. 18. Yes.

Int. 19. Did you continue to make the landings at the Hamilton warehouse, or landing near there, and at the landing of the Wabash freight-house?

Ans. 19. We did.

Int. 20. In this time that we are talking of, 1864, did other steamboats come to Keokuk and cross over to Hamilton?

Ans. 20. They did.

Int. 21. What, then, in brief, Mr. Sample, would be your statement

as to the condition of the river for navigation at the time you were engaged in the ferrying business between Keokuk and Hamilton?

Ans. 21. It was good for all purposes used.

Int. 22. What particular differences were there on this line or at either landing?

Ans. 22. There was not any material difference.

Cross-examination:

Int. 1. Do you mean to state, Mr. Sample, that the river was the same depth all the way from the Iowa shore to the Ills. shore along that line?

Ans. 1. No, sir.

Int. 2. Where do you find the deepest water?

147 Ans. 2. Without any special soundings, about the middle of the river.

Int. 3. Did you know what was known as Old Dominion rock?

Ans. 3. I did not, but I knew of it.

Int. 4. Did you learn about the location of this rock?

Ans. 4. As pointed out to me by different rivermen, for it was often spoken of at that time.

Int. 5. On which side of the place pointed out to you as the location of Dominion rock did the boats go in passing up and down the river?

Ans. 5. On both sides of it.

Int. 6. Which side was the deeper water?

Ans. 6. I could not say as to that.

Int. 7. On which side was the main channel of the river?

Ans. 7. I could not say as to that.

Int. 8. Has the channel materially changed now from what it was in 1864?

Ans. 8. I do not know that it has. I have not had much connection with the river for 20 years.

Int. 9. Did the Keokuk and Hamilton Bridge Co., the present owners of the bridge, construct this bridge?

Ans. 9. The Keokuk & Hamilton Bridge Co. constructed the bridge.

Int. 10. Do you know where they constructed the draw in that bridge with reference to the channel of the river?

Ans. 10. No, sir; I do not.

Int. 11. Do you know whether or not the navigable channel of the river is just under the draw of this bridge or not?

Ans. 11. I do not.

Int. 12. Do you know where the main channel—that is, the place where the boats travel—is located as between Hamilton and Keokuk?

Ans. 12. Through the draw of the bridge.

Int. 13. How much has the channel of the river at about the location of this bridge varied since about 1864?

148 Ans. 13. Very little, if any.

Int. 14. Then, in your opinion, the main channel of the river at the present time is about the same that it was in 1864?

Ans. 14. I should think it was.

Int. 15. At the present time the channel—that is, the place where the boats travel—is at the draw of the bridge?

Ans. 15. Yes, sir.

Redirect examination:

Int. 1. Mr. Sample, do you know where the lower lock to the channel is located?

Ans. 1. I do.

Int 2. How far is it above the draw-span of the Keokuk & Hamilton bridge?

Ans. 2. I should think some four or five hundred feet.

Int. 3. What improvement did the U. S. Government make from the lower lock to the draw of the bridge?

Ans. 3. It blasted and dredged a channel.

Int. 4. Do you know where that blasted channel terminated at the lower end?

Ans. 4. About the west end of the bridge.

Int. 5. Do you know what reasons compelled the location of the draw of the Keokuk & Hamilton bridge at its present place?

Ans. 5. I do.

Int. 6. State the reasons for locating the draw at its present location.

Ans. 6. The operation of the canal.

Int. 7. If the draw-span of the bridge had been located in the middle of the river over the main channel, how could steamboats have entered the canal in high water?

Ans. 7. They could not have entered the canal.

Int. 8. If the draw-span of the bridge had been located in the middle of the river over the main channel, what dangers would have been encountered in leaving the canal to pass through the bridge?

149 Ans. 8. Great danger; I should think — almost impossible.

Recross-examination:

Int. 1. You do not mean to say that the main channel of the river—that is, the place where the boats go—is in the middle of the bed of the stream, do you?

Ans. 1. I do.

Int. 2. Where at?

Ans. 2. Where they did go.

Int. 3. Well, then, the channel now has materially changed from what it was in 1864, has it not?

Ans. —. Yes, sir.

Int. 4. It is just the same now that it was in 1864?

Ans. 4. Yes, sir; I think so.

Int. 5. Did you not tell me that the main channel of the river—that is, the place where the boats go in traveling up and down the river—was at the draw?

Ans. 5. The place where the boats go is at the draw.

(Signed) W. S. SAMPLE.

The deposition of John Smith as follows:

Interrogatories propounded to the said JOHN SMITH, a witness produced and sworn as aforesaid on the part of the Keokuk & Hamilton Bridge Co., and his answers thereto, as follows:

Int. 1. What is your name, age, and residence?

Ans. 1. John Smith; age, fifty-five years; residence, Keokuk.

Int. 2. What is your occupation?

Ans. Fisherman, carpenter, or boat-builder, or anything that comes handy.

Int. 3. As a fisherman how have you gained knowledge of the Mississippi river, its bed, and the islands in the river between Keokuk, Iowa, and Hamilton, Illinois?

Ans. By putting in nets and sounding the water.

Int. 4. What is the condition of the bed of the Mississippi river between Keokuk, Iowa, and Hamilton, Illinois?

150 Ans. A solid bed of flat rock all the way across.

Int. 5. What difference, if any, are to be found in the stage of the water crossing the river?

Ans. When the water is low there is water to the fifth pier for navigation.

Int. 6. Where, then, do you state the main channel to be in connection with that—that is, the main steamboat channel in connection with the statement above?

Ans. The main steamboat channel would be about the 4th pier or fifth pier, but that is a hard question to answer, because no two steamboats travel the same channel.

Int. 7. How is the stage of the water along the Illinois shore as compared with the stage of water along the Iowa shore?

Ans. It is not so good.

Int. 8. Do you know where the old Wabash freight depot was located in Illinois?

Ans. Yes.

Int. 9. Well, where was it located?

Ans. At the butt of the bridge, about two hundred yards or three hundred yards from the butt of the bridge.

Int. 10. Do you know where the old Hamilton warehouse was located up the river?

Ans. About 800 yards above the bridge.

Int. 11. Have you ever seen steamboats land at the Hamilton warehouse or the Wabash freight depot?

Ans. Yes, sir.

Int. 12. At what stages of water could they land at these places?

Ans. They could land at a four-foot stage.

Int. 13. Have you ever seen ferry-boats crossing the river between Keokuk and Hamilton?

Ans. Yes, sir.

Int. 14. About how much water would they draw when loaded?

Ans. From three to three and a half or a little over.

Int. 15. Did those ferry-boats cross at all stages of water?

Ans. Yes, sir.

151 Int. 16. Could those ferry-boats cross when steamboats could not cross the rapids on account of low water?

Ans. Yes, sir.

Int. 17. State whether the packet-boats could cross from Keokuk to Hamilton at a stage of water when they could not go across the rapids to Montrose.

Ans. They could.

Int. 18. What obstructions are to be found in the river crossing from Keokuk, Iowa, to Hamilton, Illinois, above or below the bridge?

Ans. None; without a sand bar made there.

Int. 19. If there are holes in the bed of the river under the bridge do they extend above or below the bridge or do they disappear?

Ans. There is a kind of a hole in the river that runs up above the bridge.

Int. 20. State whether there is any obstruction, artificial or otherwise, existing under the bridge today.

Ans. A crib-work where the span has been on, on the east long span. There is a crib-work under the east long span.

Cross-examination by Mr. W. H. HARTZELL:

Int. —. How long have you been fishing on this Mississippi river?

Ans. About twenty years, off and on.

Int. 2. Have you been in Keokuk all that time?

Ans. Yes, sir.

Int. 3. You spoke of there being a deep hole underneath the bridge. Where is that located?

Ans. Under the draw-span; under the first long span; under the west side.

Int. 4. Does that hole there extend up and down the river from the bridge?

Ans. It extends up the river.

Int. 5. Doesn't it also extend below the bridge?

Ans. A little bit; not much; don't amount to anything.

Int. 6. About how far?

Ans. About twenty-five or thirty feet.

Int. 7. Doesn't it extend farther than that?

Ans. No; it doesn't extend any farther.

152 Int. 8. Is that the deepest water between Keokuk, Iowa, and Hamilton, Illinois?

Ans. Yes, sir.

Int. 9. Do the boats traveling up and down the river follow that hole?

Ans. No, sir; they follow the water; they don't follow the hole; they follow the river. There is a deep cut up in that river there on the first long span on the west side.

Int. 10. Do the boats in going up and down the river pursue that channel you have just spoken about?

Ans. No; they do not.

Int. 11. Did they pursue that channel before the bridge was built?

Ans. Yes, sir.

Int. 12. And that was the deepest water between Keokuk and Hamilton?

Ans. Yes, sir.

Int. 13. After the bridge was built the bridge company or some one else excavated over near the Iowa shore, didn't they?

Ans. I expect they did; I don't know; from the bridge up.

Int. 14. And the boats now follow that channel?

Ans. Yes; they follow that channel.

Int. 15. Now, then, how deep is that hole that you have just mentioned?

Ans. Now, that is a hard question to answer; about ten feet in the low stage of water.

Int. 16. How deep is the water at the fifth pier?

Ans. About four feet at the fifth pier.

Int. 17. How deep at the fourth pier?

Ans. About five feet.

Int. 18. How deep at the sixth pier?

Ans. About three feet and a half.

Int. 19. How deep at the third pier?

Ans. About five feet.

Int. —. How deep at the second pier at the Iowa shore?

Ans. About eight feet.

Int. 21. That is the pier that is in the channel or the hole that you have reference to?

Ans. Yes.

153 Int. 22. And that extends up and down the river?

Ans. Yes.

Redirect examination by Mr. JOHN COLE:

Int. 1. This deep water that you speak of you say extends to the fifth or sixth pier.

Ans. Yes.

Int. 2. Have not steamboats recently passed under the east span of the *river*, pushing rafts up the river for Dickinson and Bartlett?

Ans. Yes.

(Signed) JOHN SMITH.

Deposition of John C. Daniels as follows:

Interrogatories propounded to the said J. C. DANIELS, produced and sworn as aforesaid on the part of the said Keokuk and Hamilton Bridge Co., and his answers thereto, as follows:

Int. 1. What is your name, age, and residence?

Ans. John C. Daniels; age, fifty-five; residence, 109 High St., Keokuk.

Int. 2. What is your occupation?

A. Steamboating and rafting lumber.

Int. 3. How long have you been engaged in this business?

Ans. I have been engaged in rafting and steamboating since '67.

Int. 4. How many steamboats did you own in the year 1894?

Ans. Two.

Int. 5. Are you acquainted with the Mississippi river between Keokuk, Iowa, and Hamilton, Illinois?

A. I am to a certain extent.

Int. 6. What is the general character of the river bed between Keokuk and Hamilton?

Ans. It is rocky—rock bottom.

Int. 7. What is the general profile of the river bed, level or undulating?

Ans. I should say very near level.

Int. 8. Where do the Des Moines rapids of the Mississippi river begin at the lower end?

154 Ans. Well, the first riffle, as we would call it, or rapid—I have got to make a guess—probably a quarter of a mile above the bridge. Still some might claim it began at the bridge. It is quicker water above than below the bridge.

Int. 9. How far below the bridge does this rock bottom that you mention extend before it shelves off?

Ans. Well, we find rock bottom for a quarter of a mile below the bridge; maybe more.

Int. 10. Then is it or is it not true that the rapids begin below the bridge where the rock bottom shelves off in deep water?

Objected to as leading and suggestive.

Ans. No; I wouldn't consider the rapids to begin until you get to the bridge.

Int. 11. What effect do the Des Moines rapids have upon navigation at a low stage of water?

Ans. All boats and rafts are obliged to go through the canal. Navigation is suspended over the rapids.

Int. 12. What has been the condition during the present season of 1895 as to navigation, outside the canal, over the Des Moines rapids?

Ans. There has been practically none.

Int. 13. What improvement has the Government made in order to improve navigation over the Des Moines rapids?

Ans. They have built the canal; cost them a sum of money; five millions, I suppose.

Int. 14. How long is that canal?

A. Seven miles and a half.

Int. 15. What was necessary at the lower end to gain access to the canal?

Ans. It required cofferdams to be built and rock excavated.

Int. 16. How far down the river did that excavation begin?

Ans. Below the bridge—under it.

Int. 17. Where did it extend to up the river?

Ans. Up into the locks.

155 Int. 18. What was the object of this excavation?

Objected to generally.

Ans. It was done in order to make sufficient water in that part of the river to allow boats to pass in very low water.

Int. 19. To allow boats to pass where and from?

Ans. To allow boats to pass into the canal.

Int. 20. Do you know the location of the Old Dominion rock?

Ans. I do not exactly; know very near, but not exactly.

Int. 21. Have you ever delivered lumber along the east shore of the Mississippi river in front of the city of Hamilton, Illinois?

Ans. I have delivered lumber in the slough, and also outside.

Int. 22. What slough do you refer to?

Ans. The one passing by Hamilton or the east side of the body of water.

Int. 23. By what name is it known?

Ans. I think it is called "Hamilton slough."

Int. 24. Did you deliver lumber in this slough with a steamboat?

Ans. I did.

Int. 25. Did you find a channel that you could handle a steamboat in this slough?

Ans. Found all the water needed for our boat and raft.

Int. 26. What do you mean by delivering lumber outside, Captain?

Ans. The main river side of the bank.

Int. 27. At what point with reference to the east end of the Keokuk & Hamilton bridge?

A. I have landed lumber most every point on the river side from the head of the slough or a half a mile above Hamilton to below the bridge—below the bridge.

Int. 28. When there is a low stage of water, preventing navigation over the rapids, how do you proceed to reach the east side of the river and land the lumber as described by you here?

Ans. We pull it across the river and go under the bridge as far as our boat would let us.

156 Int. 29. Please describe more in detail the course you would take from the time you left the canal until you landed at the point required on the east side of the river.

Ans. We drop the raft through the bridge and then push up against the current and flank it across, and then push it up under the bridge, generally with small boats on the upper or upstream end of the raft.

Int. 30. Which span do you drop through after leaving the canal?

Ans. The west side of the draw-span.

Int. 31. What span do you push it under on the east side of the river?

Ans. Sometimes the shore span, but generally the second span.

Int. 32. If it becomes necessary to land the rafts further upstream than you can by this proceeding, how then do you proceed?

Ans. If the water is not too low, we go above the bridge through the draw and pull the raft up farther.

Int. 33. State whether you have ever towed timbers across the

river with a boat having low chimneys that you could pass under the bridge.

Ans. Yes; we have done that.

Int. 34. Where did you start from on the Iowa side?

Ans. We started from above the bridge, dropped through the shore span of the draw and pushed the timber through, I think, about the middle of the bridge, and landed on the other side above the bridge one hundred and fifty yards.

Int. 35. Before the building of the bridge or any other artificial obstruction in the river how did the state of water along the Illinois shore compare with the stage of water along the Iowa shore, between Keokuk, Iowa, and the State of Illinois?

Ans. I am not able to answer that question. That was before sixty-seven; I was not very well posted here.

Int. 36. For what purpose are wing dams built in the river by the United States Government?

157 Objected — as immaterial, irrelevant, and not showing that witness is competent to answer the question.

Ans. They are built for purpose of throwing the water to the other side of the river and cutting out bars and increasing the depth of water; also confining the water.

Int. 37. What is the practical effect, then, of building a wing dam in the river?

Same objection as above.

Ans. It increases the depth of water on the other shore; forms a bar above and below the dam.

Int. 38. Are you acquainted with the highway across the islands extending from the slough bridge at Hamilton in a westerly direction and forming what is commonly known as the "dike"?

Ans. I am.

Int. 39. What difference in the effect produced upon the flow of water in the Mississippi river is there between that produced by the building of this dike and that which would be produced by the building of a wing dam along the same line?

Ans. I don't know that the building of that dike had any effect only in high water.

Int. 40. If in building that dike it extended from one island to another, closing up the sloughs running between the islands, what then would be the effect upon the stage of water on the other shore?

Ans. High water would form a stronger current in the river.

Int. 41. If in building that dike sloughs were closed up that were open at all stages of water, what then would be the effect of a low stage of water?

Ans. It would deepen the water in the main river.

Int. 42. On which side of the river?

Ans. If extended from the east side of the river it would deepen it on the west side.

Int. 43. ——.

Cross-examination by Mr. W. H. HARTZELL:

Int. 1. The excavation that was made by the Government—did that connect the main channel of the river with the canal or not?

158 Ans. It connected it with the river where it was deeper water—better water. There was better water out further in the river than where they stopped excavating.

Int. 2. Where was the deepest water between Hamilton and Keokuk on a line with the Keokuk and Hamilton bridge?

Objected to as not being cross-examination.

Ans. As far as I sounded, it was about opposite, up and down the river, of the east side of the draw-bridge.

Int. 3. Was that the place the boat went up and down the river?

Objected to for the same reason as above.

Ans. Most of them went on that side of the draw before the canal was finished.

Int. 4. On which side of the river is this canal you have mentioned?

Ans. West side.

Int. 5. On the Iowa side?

Ans. Yes.

Int. 6. How far is it from the draw of the Keokuk and Hamilton bridge to the lower end of the canal?

Ans. I couldn't state correctly.

Int. 7. About how far?

Ans. It is about a thousand feet, making a guess, from the bridge.

Int. 8. Did the Government excavate that full distance?

Ans. I think they did, if I remember right.

Int. 9. Did they excavate from the main channel of the river to the lower end of the canal?

Objected to as not proper cross-examination.

Ans. They excavated as far down as it would require—that is, being to the bridge.

Int. 10. How far from the Iowa shore was it to where they quit excavating?

Ans. They excavated right down into the west side of the draw. I don't know how far out the Iowa shore was.

Int. 11. Was that to the main channel of the river—that

159 is, the place where the boats go in passing up and down the river?

Objected to as not proper examination and that the witness has already been asked that question.

Ans. I can't answer that question any better than I have already.

Int. 13. What do you say to it now?

Ans. I think I said there was deeper water farther out and below the bridge.

Int. 14. How much farther out in the river?

Ans. Well, the east side of the draw-span below the bridge, not deeper than the draw-span.

Int. 15. What stage of water was there when you landed rafts and boats along the Illinois shore opposite Hamilton; high or low water?

Ans. I have landed them there in high water, what we would call medium stage above the bridge.

Int. 16. Could you land there in a low stage of water?

Ans. Not now at a low stage of water.

Int. 17. Why was it that when you came out of the canal with a raft that you didn't take the same directly across the river to Hamilton?

Ans. There was a boom interfered that extends from the canal to the bridge.

Int. 18. If it were not for that boom in a low stage of water, would the water be of sufficient depth to enable you to land on the Illinois shore above the bridge?

Ans. It would not this season, as there is a bar formed, but is moving down the river.

Int. 19. Could you have done so last season?

Ans. Not at extreme low water, but lower than you could this year.

Int. —. Are the boats which you have referred to of the same class as those that pass up and down the river in the trade?

Ans. They are not as large.

Int. 21. Can they or can they not navigate in less water than the average boat that plies in the trade up and down the river?

160 Ans. We are obliged to keep in the channel with our rafts and boats, and some passenger boats are as light draft as our boats for rafting purposes.

Int. 22. How many feet of water is necessary to enable your boats to travel?

Ans. They call my boat a thirty-inch boat, but three feet suits her better.

Int. 23. Did you ever get stuck with your boat while landing lumber at Hamilton?

Ans. No.

Int. 24. How many feet of water does it take to enable the average passenger boat to run?

Ans. It requires from three to four feet; that is light.

Int. 25. When a boat is loaded with freight and passengers, how many feet would it require?

Ans. That would depend on the depth of the hull of the boat; some are four feet, some five, some six or eight.

Int. 26. Then it isn't every boat that could land a raft at Hamilton, is it?

Ans. There is no raft-boats that draw much over three feet of water.

Int. 27. Other boats that ply in passenger and freight traffic couldn't land the same as your boat could land?

Ans. That would depend on the class of boat or size.

Int. 28. Is your boat smaller than the average passenger and freight boats?

Ans. There is a great many passengers and freight boats that have not half the capacity that mine — on the river.

Int. 29. Then do the passenger and freight boats land at Hamilton the same as your boat does, with rafts?

Objected to as not proper cross-examination, no question having been asked the witness as to what other boats land there.

Ans. Passenger and freight boats don't handle rafts.

Int. 80. Well, do they land at Hamilton?

Same objection to that question.

161 Ans. I have seen boats land for passengers on the other side.

Int. 31. Was that in high water or low water?

Ans. Medium stage of water.

Int. 32. How long ago has that been?

Ans. Within the last—I couldn't say the exact year. They were excursion boats.

Int. 33. Where, in your opinion as a boatman, is the main channel of the Mississippi river between Keokuk and Hamilton on the line of the Keokuk bridge?

Objected to as not being proper cross-examination, as being immaterial.

Ans. Well, I wouldn't want to state where it was without carefully sounding the river. We are required to pass through the draw.

Int. 34. Is the water as deep on the Illinois side, where you testified that you landed with a raft, as it is under the draw of the bridge?

Ans. Parts of it is.

Int. 35. What part is that?

Ans. Some places are a little deeper than others; it is a rock bottom.

Int. 36. Where do you find the deepest water?

Ans. I couldn't state, as I tell you, without sounding it. The deepest water would be the channel, without it would be a hole.

Int. 37. ——.

(Signed) JOHN C. DANIELS.

Deposition of H. McKENZIE as follows:

Int. 1. What is your name, age, and residence?

Ans. Hugh McKenzie; thirty years old; Keokuk, Iowa.

Int. 2. What is your occupation?

Ans. Pilot on the upper Mississippi river.

162 Int. 3. How long have you been employed as a pilot?

Ans. Since 1879.

Int. 4. By whom have you been employed mostly?

Ans. United States Government.

Int. 5. What boats have you had in charge as pilot?

Ans. Messenger, Stella, Lucia, The Louise, Iris, Vixen, Coal Bluff, J. G. Park.

Int. 6. What are these boats used for?

Ans. Improving the Mississippi river.

Int. 8. In what way are they generally used in improving the river?

Ans. Dredging, building dams and short projections, snagging and general soundjng.

Int. 9. What number of these boats are used for towboats?

Ans. They are all towboats.

Int. 10. Are you acquainted with the river between Keokuk, Iowa, and Hamilton, Illinois?

Ans. Yes, sir.

Int. 11. Have you had occasion to cross and recross the river in towing, sounding, and discharging various other duties in the way of improving the Mississippi river?

Ans. Yes, sir.

Int. 12. What is the general character or profile of the bed of the river between Keokuk and Hamilton?

Ans. Rock.

Int. 13. Is the river bed practically level or is it undulating?

Ans. It rises and falls; it isn't level.

Int. 14. Where do the Des Moines rapids of the Mississippi river commence at their lower end?

Ans. Starting at the foot of Bank street.

Int. 15. About how far below the Keokuk and Hamilton bridge?

Ans. Proximately, five or six blocks below the bridge.

Int. 16. What improvement has the Government made for the purpose of safely navigating the Des Moines rapids?

163 Ans. They built the Des Moines Rapids canal.

Int. 17. Along which shore does that extend?

Ans. Along the Iowa shore.

Int. 18. At what stage of the water are steamboats compelled to use the canal rather than come outside over the Des Moines rapids?

Ans. About a three-foot stage.

Int. 19. When the canal becomes filled up with debris, what is done by the Government to increase the depth of channel and make it navigable again?

Ans. It is cleaned out by means of dredging.

Int. 20. When the material of the lower end of the canal is dredged out where is it taken?

Ans. If we were working above in the upper end of the canal it is taken out at the upper end of the canal. If we were working at the lower end of the canal it is taken out at this end through the Keokuk & Hamilton bridge and over at the other side of the river.

Int. 21. How often has the lower end of the canal been thus dredged since you have been engaged as a pilot of the Government?

Ans. I have been towing stuff out of this end every season steady for about probably two months each season for the last five years, except this season.

Int. 22. Where did you dump this material?

Ans. On the other side of the river—on the Illinois side.

Int. 23. How close to the Keokuk & Hamilton bridge have you gone with your dump-boats to deposit material?

Ans. I went across probably three hundred feet below the east pier along the shore. I have also come back right under the piers, almost touching them; I have also dumped stuff right against the piers.

Int. 24. What pier have you dumped stuff against, or just immediately below?

164 Ans. It is the pier the ice had the effect on that winter that had so much rock around it.

Int. 25. How much do these dump-boats draw that you used?

Ans. They averaged, all of them, between three and a half and four feet.

Int. 26. How close to this pier did you shove these dump-boats before you discharged their loads?

Ans. Right against them.

Int. 27. In what directions have you crossed the Mississippi river, both above and below the bridge, on various errands for the Government?

Ans. I went over there on those trips with dump-boats towing dumps. I went over above the bridge once with steamboat to rescue a man that turned over in a sail-boat above the bridge.

Int. 28. What obstructions to navigation did you find in crossing the river in the way you have described?

Ans. I didn't find any obstructions.

Int. 29. Do you know of any artificial obstructions remaining in the river under the Keokuk & Hamilton bridge?

Ans. There is an old pier out there under the span known as the "War Eagle span."

Int. 30. What span is that and what was that pier built for?

Ans. That is the second raft span east of the draw. It was built at the time the War Eagle knocked the span down to hold up a temporary structure.

Int. 31. As a pilot what would you describe a steamboat channel to be?

Objected to on the ground that it calls for conclusion of the witness and not proper foundation and it is a question that calls for a conclusion of the witness on a question of law.

Ans. A channel of a river; any practicable body of water that a steamboat has reason to and can navigate.

Int. 32. Are steamboat channels so well defined that all steamboatmen or pilots follow at all seasons of the year the same channel?

165 Same objection as last above.

Ans. No, sir.

Int. 33. Have any variations of the steamboat channels between Montrose and Burlington occurred during your experience as a pilot?

Objected to as immaterial.

Ans. Yes, sir.

Int. 34. Have any changes of the steamboat channel occurred between Keokuk, Iowa, and Warsaw, Illinois, during your experience as a pilot?

Objected to as immaterial.

Ans. Yes; the channel has changed.

Int. 35. State whether or not you are not called upon frequently to operate dredges and create new channels for steamboats to navigate at low stages of water.

Objected to as immaterial.

Ans. Yes, sir.

Int. 36. You defined a steamboat channel to be any pra-ticable body of water that a steamboat has reason to and can navigate. If that be your definition, how many steamboat channels have you navigated between Keokuk, Iowa, and the Illinois shore?

Ans. I have navigated several.

Int. 37. How many steamboat channels have you navigated between Keokuk, Iowa, and Warsaw, Illinois?

Objected to as immaterial.

Ans. There is one practical channel. The channel has changed several times, and in high water you can go most any way to Warsaw, through the sloughs or straight from Keokuk.

Int. 38. How many steamboat channels have you navigated from Montrose, Iowa, to Burlington, Iowa?

Objected to as immaterial.

Ans. There is one practical channel. The channel has changed on different occasions, as we are changing it by our different
166 work at the present time.

Int. 39. ——.

Cross-examination by Mr. W. H. HARTZELL:

Int. 1. As I understand you, then there is always one main channel in the river, and then at different stages of the water there may be other channels. Is that correct?

Ans. No, sir.

Int. 2. Are these channels always there?

Ans. No, sir.

Int. 3. Is there one main channel between Keokuk and Hamilton?

Ans. No, sir.

Int. 4. How many channels are there?

Ans. It is all navigable. There is no sand there. It is deeper on the other side than here.

Int. 5. Why is it that when you dredged the canal that you did not dump the filth on the Iowa side just below the bridge?

Ans. Because at that time when we dump over there it is the deepest place, and we put it over there so it won't stop navigation.

Int. 6. The reason is, then, that the navigation by the boats plying up and down the river is nearly all to the west side of the river or near the Iowa shore?

Ans. No, sir.

Int. 7. If the navigation, then, can be just as well carried on by the boats near the east side of the river or near the Illinois shore, why is it that when the filth is dumped in the river at that point that it does not obstruct navigation?

Ans. It hasn't obstructed navigation over there. It has virtually made it better, for the reason is that it filled up the head of the slough below the bridge, and it is all there yet.

Int. 8. Never has been washed out?

Ans. There is a gradual wash there the same as there is
167 at any other flat bar. It is a sand bar where we had dumped.

Int. 9. Can the boats land at Hamilton at a low stage of water at a point where the bridge ends at Hamilton?

Ans. Yes, sir.

Int. 10. Can a boat such as you have described land at the city of Hamilton at a point where the bridge touches in a low stage of water?

Ans. I have landed boats at that point on different occasions.

Int. 11. In a low stage of water?

Ans. Yes, sir.

Int. 12. Where is the deepest channel between Keokuk, Iowa, and Hamilton, Illinois, on the line of the Keokuk and Hamilton bridge?

Ans. I think it would be the second pier outside of the second raft span east of the draw.

Int. 13. With reference to the draw-span or pivot pier, where is the deepest channel?

Ans. It is as deep on one side of the draw as it is on the other.

Int. 14. Does that channel extend up and down from the bridge?

Ans. Yes, sir.

Int. 15. Is that or is it not the channel that the boats usually follow in going up and down the river?

Ans. No answer.

Int. 16. Now, does that same deep water extend up and down the river?

Ans. No, sir; it extends down from below the bridge.

Int. 17. About how far?

Ans. Till you get off the rapids.

Int. 18. How wide is that deep water you have just described?

Ans. It is wide enough that I dropped a boat and five barges out in it last season. It is as wide as across the street here; over one hundred feet—one hundred and fifty feet.

168 Int. 19. In passing under the bridge in a low stage of water is there more than one channel through which a steamboat can pass, provided the bridge was out of the way?

Ans. Yes, sir; there is if the bridge wasn't there.

Int. 20. Is there one next to the Iowa shore?

Ans. Yes, sir.

Int. 21. Where is the next one?

Ans. Well, the next one is the outside draw-span when you get next to the Iowa shore.

Int. 22. Is there any other than these two?

Ans. The next outside raft span a steamboat can't go through there on account of the bridge being there.

Int. 23. Now, where is the next one?

Ans. On the east end of the Keokuk & Hamilton bridge.

Int. 24. Then your idea is that there are four channels in the river at that point?

Ans. No, sir.

Int. 25. Then it is all channel from one shore to the other?

Ans. That is my idea, but I named over the deepest points.

Int. 26. Where is the channel, then, that the boats use in plying up and down the Mississippi river at a point on the Keokuk & Hamilton bridge?

Ans. There are large boats that can't go under the bridge that have to go through the draw.

Int. 27. Where do you live?

Ans. In Keokuk, Iowa.

Int. 28. Where are you working at the present time?

Ans. In the vicinity of Burlington, Iowa.

Int. 29. Was you subpœnaed to have your deposition taken today?

Ans. I was ordered down here not by subpœna; I come by word from Mr. Cole.

Int. 30. Did you ever have any talk with Mr. Cole about this matter?

169 Ans. No, sir; didn't know anything about the case whatever.

(Signed) HUGH McKENZIE.

Deposition of D. C. STEELY as follows:

Int. 1. What is your name, age, and residence?

Ans. D. C. Steely; age, 53; residence, Keokuk.

Int. 2. What is your occupation?

Ans. Pilot on the river.

Int. 3. Pilot on what river or what part of the river?

Ans. Mississippi river from Rock Island to St. Louis.

Int. 4. How long have you been acting as a pilot of steamboats?

Ans. Commenced in '64.

Int. 5. Are you familiar with the river between Keokuk, Iowa, and Hamilton, Illinois?

Ans. Yes, sir.

Int. 6. What experience have you had as a pilot upon steamers plying in that portion of the Mississippi river?

Ans. Between six and seven years.

Int. —. Upon what kind of steamboats?

Ans. Ferry-boats.

Int. 8. What kind of ferry-boats?

Ans. The ferry-boat was "The Gate City;" to ferry teams across the river; steam ferry-boats.

Int. 9. What was their draft when loaded?

Ans. About three and a half feet.

Int. 10. Where did you land these ferries on the Hamilton side?

Ans. We have landed by what they call the upper dike that goes straight up out to Hamilton; at another dike just above the bridge.

170 Int. 11. State whether or not you ever landed in what is called Hamilton slough.

Ans. We went up and came down the slough and landed at Hamilton.

Int. 12. What kind of a channel did you find in Hamilton slough?

Ans. There was pretty good water in there.

Int. 13. How would you as a pilot define a steamboat channel?

Objected to as being a question of law.

Ans. A steamboat channel is—wherever the best water is, I call it.

Int. 14. Did you find a steamboat channel in Hamilton slough?

Ans. Found a channel for the ferry-boat.

Int. 15. What obstructions to navigation did you find in crossing the Mississippi river between Keokuk, Iowa, and the west side of the islands on the Illinois shore?

Ans. Sand bars. The chimneys of the steamer Louisiana lay outside the ferry dock.

Int. 17. How did these chimneys happen to be there?

Objected to as immaterial.

Ans. She blowed loose from the shore here in a storm and struck the bar, and the chimneys went overboard.

Int. 18. What was the condition of the water in 1864?

Objected to as immaterial.

Ans. The water was very low, very low.

Int. 19. Did packets running between St. Paul and St. Louis navigate the river during that time?

A. No, sir.

Int. 20. Was the ferry operated between Keokuk, Iowa, and Hamilton, Illinois, during that time?

Ans. Yes, sir.

Int. 21. What was the condition of the water on the Iowa side in low water as compared with that on the Illinois side?

Ans. The water was a little better on the Illinois side than it is on this side.

171 Int. 22. ——.

Cross-examination by W. H. HARTZELL:

Int. 1. If a boat was passing up and down the river at an ordinary stage of water, on which side of the river would you find the best water?

Ans. They would come down in the middle or up.

Int. 2. At the Keokuk & Hamilton bridge, where is the best water?

Ans. I can't tell; it has been so long since I have been out there; can't tell the exact spot.

Int. 3. With reference to the draw, whereabouts is it?

Ans. That on this side of the draw is better than on the outside because it has been blasted out.

Int. 4. Where was the best water prior to the time of the blasting out of the channel?

Ans. Wasn't any difference; about the same.

Int. 5. With reference to the east end of the draw-span, where do the boats go in passing up and down the river at the present time?

Ans. They go up this side, west side, and enter in the canal.

Int. 6. Is that the best water?

Ans. Best water at the present time.

Int. 7. Is that what you call the channel of the river at the present time at that point?

Ans. I call that the channel at the entrance of the canal.

Int. 8. Well, then, where is the channel of the river?

Objected to as not proper cross-examination.

Ans. You can take both sides of the draw for a channel.

Int. 9. By that you mean the water east of the draw and also west of the draw. Is that correct?

Ans. That the channel is there now on account ofthe draw; that you can't get anywhere else on account of the bridge.

172 Int. 10. Was not that the best water in going up and down the river; or, in other words, was it not what you call the steamboat channel prior to the building of the bridge?

Ans. No, sir.

Int. 11. Was it not the deepest water between Keokuk and Hamilton on a line with the bridge?

Ans. No.

Int. 12. Did the old ferry-boat which you operated run on a line with the bridge at the present time?

Ans. We ran somewhere close to the line of the bridge.

Int. 13. Wasn't the route of the ferry-boat below the bridge?

Ans. It was below and above, both.

(Signed) D. C. STEELY.

The deposition of J. R. CARPENTER as follows:

Int. 1. What is your name, age, and place of residence?

Ans. J. R. Carpenter; forty-seven; Keokuk.

Int. 2. What is your occupation?

Ans. U. S. inspector.

Int. 3. What are your duties as United States inspector?

Ans. I have local charge of the works between Keithsburg and Nashville.

Int. 4. How long have you been employed by the United States?

Ans. Out here about twenty-five years.

Int. 5. Where have you been employed most of that twenty-five years; in what work?

Ans. Building the canal and operating it—the Des Moines Rapids canal.

Int. 6. What was that canal built for?

Ans. To enable boats to get from Montrose to Keokuk during low water.

Int. 7. On which shore is it built or along which shore is it built?

Ans. Iowa.

173 Int. 7. About how long is it?

Ans. Seven and six-tenths miles.

Int. 8. About how much did it cost?

Ans. About four and a half millions; couldn't say exactly.

Int. 9. What improvement was found necessary in order to gain an entrance to the lower end of that canal?

Ans. Had to excavate a channel from the bridge to the lower end of the lock.

Int. 10. How was that channel made?

Ans. Drilling and blasting; taking it out.

Int. 11. Through what kind of material did you drill and blast in making that kind of a channel?

Ans. Rock.

Int. 12. In what year did you commence work upon this canal?

Ans. In 1870.

Int. 13. In what year was the bridge built across the river at Keokuk?

Ans. Finished in '71.

Int. 14. What position do you hold by appointment of the Supreme Court of the United States?

Ans. Commissioner to locate the boundary lines on the bridges between Iowa and Illinois.

Int. 15. Upon what bridges have you marked the line?

Ans. Keokuk & Hamilton.

Int. 16. Where did you mark that line?

Objected to as immaterial, and that the records will show for itself.

Ans. I think we put the line ten hundred and forty-one feet, I think, east of the center of the draw-span.

Int. 17. What point did that mark in the Mississippi river?

Ans. At an ordinary stage, the center.

Int. 18. Where would be the middle of the main channel?

Objected to, as the witness does not state yet that he knows where the channel is.

174 Ans. At an ordinary stage I would consider the middle of the river.

Int. 19. How did you determine the point that you marked as the middle of the main channel?

Objected to as immaterial and calling for the opinion of the witness both as to fact and law.

Ans. We measured from one side of the river to the other.

Int. 20. What maps or soundings did you examine?

Objected to as immaterial.

Ans. I think we examined two or three different maps of soundings.

Int. 21. How far east of the Iowa shore did you fix as the boundary as upon the west side of the channel?

Objected to for the reason that there is a record.

Ans. I couldn't answer that.

Int. 22. State whether you fixed a point east of the west shore as marking the boundary line of the channel on the west side.

Plaintiff objects to all this evidence as not the best evidence, as there is a record.

Ans. We fixed the point.

Int. 23. State whether or not you fixed a point west of the east shore as marking the boundary of the east side of the main channel.

Same objection.

Ans. Yes.

Int. 24. State whether or not you measured the distance between these fixed points and marked the boundary midway between them or not.

Same objection.

Ans. Yes.

Int. 25. State whether or not that was the same point as the one you marked upon the bridge ten hundred and forty-one feet east of the center of the draw-span.

175 Objected to as leading, suggestive, and because the witness has already testified he didn't know how far it was.

Ans. Yes.

Int. 26. What, then, did that point marked upon the bridge indicate?

Ans. Boundary line between Iowa and Illinois.

Int. 27. What stage of water did you find between these points on the east and west side of this main channel?

Ans. I don't remember.

Int. 28. State whether or not you found the navagable stage of water between the points marking the boundaries of the main channel at an ordinary stage.

Ans. Yes.

Int. 29. What other channel is to be found in the Mississippi river east of the main channel?

Ans. I don't know much about the slough over at Hamilton.

Int. 30. Have you ever seen steamboats in that slough?

Ans. I believe I have.

Int. 31. If you saw steamboats there, would not that be evidence that there would be a steamboat channel there?

Objected to as calling for conclusion of witness.

Ans. It was evidently water enough there for a steamboat to run.

Cross-examination by Mr. W. H. HARTZELL:

Int. 1. Your idea of the main channel of the river is to take a given point on either bank of the river touched by the water at what you would call an ordinary stage. Then the middle point between those two points is what you call the middle of the main channel. Am I correct or not?

Ans. The middle of the navigable part of the river, or it would be the middle of the channel of the river.

Int. 2. At the time you made the markings on this bridge
176 did you sound the depth of the water from shore to shore?

Ans. No.

Int. 3. Did you mark the bridge with reference to the depth of water at any given point?

Ans. I don't think we did.

Int. 4. Where do the boats travel in going up and down the river at the present time?

Ans. Through the canal. They go on the west side of the draw-span.

Int. 5. Does that channel that connects with the canal extend up and down the river?

Ans. Yes.

Int. 6. Is that the channel ordinarialy traveled by the boats in passing up and down the river at the present time?

Ans. Yes.

Int. 6. For what distance below the bridge does that channel follow the Iowa shore?

Ans. I don't know.

Redirect examination by Mr. J. H. COLE:

Int. 1. Mr. Hartzell asked you, "Is that the channel ordinarily traveled by the boats up and down the river at the present time?" Why is this excavated channel to which you refer used at the present time?

Ans. They use that channel to get into the canal.

Int. 2. What is the present stage of water?

Ans. One foot above low water.

Int. 3. At a stage of one foot above low water can steamboats cross the Des Moines rapids outside the canal?

Ans. I don't think so.

Int. 4. Why, then, do boats take the channel excavated through the west draw of the bridge on up to the canal?

Ans. So they can get to the canal to get over the rapids.

Int. 5. And that channel is wholly an artificial one between the bridge and the canal?

Ans. Yes.

(Signed) JOHN R. CARPENTER.

177 Deposition of M. MEIGS as follows:

Int. 1. What is your name, age, and residence?

Ans. Montgomery Meigs; forty-eight; Keokuk.

Int. 2. What is your occupation?

Ans. Civil engineer.

Int. 3. What position do you hold under the United States—that is, what is your full official title?

Ans. United States civil engineer.

Int. 4. Where were you educated?

Ans. The Lawrence scientific school, of Cambridge, Mass.; Harvard college; Royal polytechnic school, of Stuttgart, Germany.

Adjourned until 7 p. m.

Plaintiff objects to the hearing of the testimony of this witness before W. J. Schlotter, for the reason that notice was given to take his deposition before another notary public at another date prior than the present time, and the People, by their counsel, appeared on said day before A. Hollingsworth, notary public, and he continued the taking of said deposition of said Montgomery Meigs until some future day, when said Meigs would appear before him, no notice having been given to take the deposition of said Meigs at any other time or place, and the taking of said deposition of said Meigs still stands continued by said Hollingsworth.

Int. 5. What work have you in charge now on the part of the United States?

Ans. I am assistant in charge of operating the Des Moines Rapids canal at Keokuk, and also I have charge of the works of river improvement between Keithsburg, Ill., and Quincy, Ill., a distance of about one hundred and ten miles.

178 Int. 6. What maps have you in charge indicating the soundings, profile, etc., of that part of the Mississippi river lying between Keokuk, Iowa, and Hamilton, Illinois?

Ans. I am custodian of a very large number of maps on which the improvement- of the rapids were projected, and also maps made for the general improvement of the river above and below the rapids between Keithsburg and Quincy.

Int. 7. Where do these rapids you refer to begin?

Ans. The rapids begin about the lower end of the canal, but the first shallow reef is about half a mile above the lower lock.

Int. 8. What is the nature of the river bed below the rapids to a point, say, one quarter of a mile below the Keokuk bridge?

Ans. It consists of ledges of lime, limestone rock, very nearly

horizontal, with here and there accidental depressions somewha deeper than the general surface.

Int. 9. How are these accidental depressions produced?

Ans. Probably by the action of the water or glacial action; no one can say.

Int. 10. Are there any of these depressions under the Keokuk bridge?

Ans. Yes; one of them.

Int. 11. What becomes of this depression as you go up or down the river from the bridge?

Ans. It runs out and merges in the general shallows.

Int. 12. What body of water is found along the Illinois shore next to the mainland?

Ans. A small channel of the river known as "Hamilton slough."

Int. 13. State whether that channel has ever been navigated by steamboats.

Ans. Yes.

Int. 14. Why has it been abandoned in latter years?

179 Ans. On account of its gradually shoaling up. The Keokuk & Hamilton bridge by its construction encroached on the natural waterway, slowing the current and causing deposits. It is, moreover, suffering the fate of thousands of other similar sloughs on the river whose natural tendency is to become shallow.

Int. 5. For what purpose are wing dams put in the river?

Ans. To concentrate the action of the current upon shallow places and cause them to scour out.

Int. 17. If a wing dam be projected into the river from the east side of the river, what will be the effect upon the opposite side?

Ans. The effect in the course of time is to cause a deposit of sand and mud, which gradually gets higher and higher, and in the end is often occupied by thickets of young willows. This deposit takes place directly below the dam, and it would by concentrating the current make the water deeper on the west shore.

Int. 18. Are you acquainted with the highway running in a westerly course from the city of Hamilton across the island out into the river and forming what is commonly known as the dike?

Ans. Yes.

Int. 20. What practical difference is there in the effect upon the water along the Iowa shore, as produced by the building of that dike, and the projection of a wing dam along the same line?

Ans. It is about the same.

Int. 21. What improvement did the Government make commencing at Keokuk, Iowa, and extending up the river over the Des Moines rapids?

180 Ans. They built a canal and a continuation above and below by open cuts in the bed of the river, making about twelve miles of artificial channel.

Int. 22. Along which shore does that artificial channel extend?

Ans. Along the Iowa shore.

Int. 23. What was the nature of the improvement made at the lower end of the canal extending down the river?

Ans. An open cut in the solid rock about eight hundred feet long.

Int. 24. Where did that end?

Ans. At the line of the Keokuk & Hamilton bridge.

Int. 25. What reasons forced the location of the draw of the Keokuk & Hamilton bridge to its present location?

Ans. Convenience of navigation and accessability to the lower entrance to the canal.

Int. 26. What reasons operate in locating the draw-span of bridges over navagable streams?

Ans. It is the practice now on the Mississippi where possible to locate the draw-span so that the shore abutment will form one side of the channel through the bridge.

Int. 28. Does this location of the draw-span have any reference to the deeper water at Keokuk, Iowa, or was it controlled by the reasons heretofore given?

Ans. I think both had their influence, the outer draw extending over water which at the time of its construction formed the main channel past the city for steamboats passing up and down.

Int. 29. What other reasons compelled steamboats to go outside of the Keokuk & Hamilton bridge when either coming in at a low stage of water or going out at a low stage?

Ans. There was a dangerous rock, known as Dominion rock, not far from the Iowa shore which boats avoided by going outside of it. This rock is said to be now covered by the upper extension
181 of the pivot pier of the draw.

Int. 30. What position do you hold by appointment of the Supreme Court of the United States?

Ans. I am one of the commissioners appointed to locate the boundary line between Iowa and Illinois at the Keokuk & Hamilton bridge.

Int. 31. Where was that boundary line to be located by decision of that court?

Ans. In the middle of the main navagable channel of the Mississippi river.

Int. 32. Describe how you proceeded to find the middle of the main navagable channel.

Ans. We first inspected the river in the vicinity of the bridge on both shores; we consulted all the maps and references available, and, as we found, we were obliged to place the boundary in the middle; this implied that the channel should have boundaries equal distance from the line we were to locate. In considering this question we took into account the general navigability of the river; we consulted the records, which had been kept for years at Keokuk, of the stages of the water above low water, and we first fixed upon an average stage. This we found, from about twenty years' observation, to be six feet and one-tenth above low water. We fixed the line on the west side where this met the river bed before it was disturbed by construction, and we did the same on the east side. We found that a line ten hundred and forty-one feet easterly from the center

of the pivot pier was half way between these points, and we marked that as the boundary.

Int. 33. If you had marked the middle of the river, measuring from shore to shore, would the boundary line have been east or west of the point you marked as the middle of the main channel?

182 Ans. If we had measured from the natural banks and located the boundary line half way between, it would have been somewhat east of its present position.

Int. 35. What artificial obstructions are to be found under the Keokuk & Hamilton bridge, and at what point or points?

Ans. There is an old pier under the center of the east raft span, and there are piles of rocks in one or two places, put there artificially.

Int. 36. How much of the Mississippi river at the stage of water you have described as an average stage of water could be navigated between the points marking the east and west boundary line of the main channel?

Ans. All of it before the Keokuk & Hamilton bridge and the various dikes on the Illinois side had been built.

(Signed) M. MEIGS.

Deposition of A. WEMPER as follows:

Int. 1. What is your name, age, and place of residence?

Ans. Albert Wemper; age, sixty-one; Keokuk, Iowa.

Int. 2. What is your occupation?

Ans. Steamboat pilot.

Int. 3. Upon what part of the river?

Ans. St. Louis to St. Paul.

Int. 4. How long have you held a license as pilot?

A. Since 1852.

Int. 5. Are you familiar with the river at Keokuk, Iowa, and Hamilton, Illinois?

Ans. Yes, sir.

Int. 6. What is the nature of the river bed between those points?

Ans. Rocky; flat rock.

Int. 7. What body of water runs along the east side next to the main shore in Illinois?

Ans. Hamilton slough.

183 Int. 8. Was that ever considered a navigable body of water?

Ans. Steamboats have navigated it.

Int. 7. What prevents their navigating it now?

Ans. It is filled up with mud and sand and bridges in two places.

Int. 10. At an ordinary stage of water where would steamboats land on the Illinois shore?

Ans. About opposite the end of the ferry dike; also at a warehouse that stood at the corner of the road that leads to the bridge now, said road being the dike now used that extends out across the islands from the foot of Main street, Hamilton, Illinois, the landing

in Hamilton slough being just below where the slough bridge for highway purposes crosses said slough.

Int. 12. What freight-house, and where was it located on the Illinois side?

Ans. East of where the east toll-bridge of the bridge is now.

Int. 13. About how far east of the east end of the present bridge?

Ans. Between seven and eight hundred feet.

Int. 14. What boats were operated in carrying the traffic from Keokuk to Hamilton?

Ans. Steam ferry-boats.

Int. 15. About how much water did they draw when loaded?

Ans. From four to four and a half —.

Int. 16. When was the low stage of water at Keokuk, Iowa?

Ans. 1864.

Int. 17. Was that before or after the building of the canal?

Ans. That was before the building of the canal.

Int. 18. Could the ordinary packet-boats plying in this trade cross the rapids at that time, during this low stage of water?

Ans. No, sir.

Int. 19. Were the ferry-boats plying between Keokuk and
184 Hamilton during this time?

Ans. Yes, sir.

Int. 20. As a steamboat pilot, what would you define a steamboat channel to be?

Ans. Anywhere that a steamboat can run.

Int. 21. Do all pilots follow the same channel at all stages of the water?

Ans. Generally they do. At times they follow different courses.

Int. 22. Does the same channel continue from one season to another to be found upon the same line up and down the river?

Ans. Not in all places.

Int. 23. What is the effect of the improvements made by the United States upon the steamboats channels?

Ans. It straightens them and deepens them.

Int. 24. If you, as a pilot running up and down the Mississippi river, pursue one course, and a dozen pilots following after you pursue other courses, has not each one marked out what may be called a steamboat channel?

Ans. Yes, sir.

Int. 25. State whether or not this is not the practice of pilots, to follow their own ideas and exercise their own judgment in determining which channel or what channel they will use.

Ans. Certainly.

Int. 26. What position do you hold by appointment of the Supreme Court of the United States?

Ans. I am one of three commissioners appointed by the United States Supreme Court to locate and mark the boundary line between the State of Iowa and Illinois at nine different bridges.

Int. 27. Where were you instructed to mark this boundary line by the decision of said court?

Ans. In the middle of the main navigable channel of the
185 Mississippi river.

Int. 28. How did you proceed to find the middle of the main navigable channel?

Ans. We proceeded to find an average stage of water, between which points we found the main navagable channel of the river, and, measuring, found the eastern boundary of the channel thus defined to the westerly boundary of the channel thus defined, divided the distance in the middle, and marked the same upon the bridge at Keokuk ten hundred and forty-one and sixty-five hundred-feet east of the draw-pier of said bridge.

Int. 29. How much of this main channel that you have described would be navigable at an ordinary state of water if all artificial obstructions were removed?

Ans. All of it.

Int. 31. Could steamboats at this average stage of water pass over the Des Moines rapids when loaded?

Ans. Yes.

Int. 32. At how much less stage could loaded steamers pass over the rapids?

Ans. The large steamers when loaded with their capacity could not pass even at that stage, but lighter boats could come over at a less stage.

Int. 34. Could these large steamers, when loaded, cross the river between Keokuk, Iowa, and Hamilton, Illinois?

A. Yes, sir.

(Signed) ALBERT WEMPNER.

Defendant next offers a paper, being a certificate from the State of Iowa, as follows, and marked Exhibit "C:"

EXHIBIT C.

Certificate.

STATE OF IOWA, } ss:
County of Polk, }

186 I, W. W. Ainsworth, do hereby certify that I am the secretary of the Iowa board of railroad commissioners, whose principal office is in the city of Des Moines, State of Iowa.

That the records and books of the said board of railroad commissioners are kept in the office of said board of railroad commissioners, at Des Moines, Iowa; that said records are under my personal care and supervision, and I am the officer who has personal charge of said office and the records that are therein kept; that among the records kept in said office is a record of the tonnage which passes over the several bridges across the Mississippi river and connecting the States of Iowa and Illinois; that the following is a true, correct, and accurate copy of said record, showing the tonnage which passes over the bridges crossing the Mississippi river from Fort Madison, Lee county, Iowa, to Hancock county, Illinois, and from Keokuk, Lee county, Iowa, to Hancock county, Illinois, to wit:

"The east-bound tonnage passing over the Fort Madison bridge is three hundred and forty-eight thousand three hundred and eighty-six (348,386) tons;"

"The west-bound tonnage is two hundred and seventy-seven thousand four hundred and fifty-seven (277,457) tons"—

"Making a total tonnage crossing the Mississippi river at the bridge at Fort Madison six hundred and twenty-five thousand eight hundred at forty-three (625,843) tons."

The tonnage crossing the bridge over the Mississippi river from Keokuk, Iowa, to Hamilton, Illinois, is as follows, to wit:

"East-bound tonnage crossing the bridge at Keokuk is twenty thousand one hundred and seven (20,107) tons;"

"West-bound tonnage crossing the Keokuk bridge is fourteen thousand one hundred and twenty-seven (14,127) tons"—

Making a total tonnage crossing the Keokuk bridge of thirty-four thousand two hundred and thirty-four (34,234) tons.

187 I certify that the foregoing is a true, accurate, and correct statement of the respective tonnage crossing the said bridges at Fort Madison and Keokuk, Iowa, as same appears from the public records of the Iowa board of railroad commissioners.

Witness my hand and seal official this 10 day of August, A. D. 1895.

(Signed) W. W. AINSWORTH. [SEAL.]

STATE OF IOWA, }
Polk County. }

I, W. W. McFarland, hereby certify that I am secretary of the State of Iowa; that as such secretary of the State of Iowa I am the keeper of the great seal of the said State of Iowa; that I am personally acquainted with W. W. Ainsworth and personally know that said W. W. Ainsworth is the secretary of the Iowa board of railroad commissioners of the State of Iowa and keeper of the records of said board; that I am acquainted with the official signature of said W. W. Ainsworth as such secretary of the said Iowa board of railroad commissioners and I know the foregoing signature to be the true and genuine signature of said W. W. Ainsworth.

I further certify that the said certificate given by said W. W. Ainsworth and the attestation to same is in due form and given by the proper officer.

Witness my hand and seal official this 10 day of August, A. D. 1895.

(Signed) W. M. McFARLAND, [SEAL.]
Secretary of State.

Objection as immaterial and not proper; also that it is not a deposition.

The COURT: It may go in until the case is argued.

188 Defendant next offers and read- in evidence the assessor's book of Appanoose township for 1894, showing the assessment of the bridge across the river at Ft. Madison, Iowa.

Offering particularly line 26, on page 1, to line 12, on page 2, inclusive, as follows:

Mississippi River railroad and toll bridge, also called the Chicago, Santa Fe and California Railway Bridge Co., commencing in the center of the main channel of the Mississippi river, which for more accurate description is designated to be the center of pier No. 5, known in the C., S. F. & C. survey as station No. $8 \times 64\frac{6}{10}$ on the 5th pier of the main bridge from Iowa shore, from bank of said river, counting the Iowa shore abutment as pier No. 1, thence in an s'easterly direction $1{,}224\frac{1}{10}$ ft. to the center of pier No. 10, known in the C., S. F. & Co. surveys as station No. $20+88\frac{7}{10}$, said pier No. 10 being the 10th pier from the Iowa shore, situated on Island No. 15, in sec. 10, Appanoose tp., Hancock Co., Ill., including the abutments, structures, and improvements thereon, sec. 10, tp. 7, rng. 8. Fair cash value of improved lands, $90,000; total fair cash value, $90,000.

Next offers and read in evidence a paper marked Exhibit D, being the return made by the Keokuk and Hamilton Bridge Company to the State board of equalization, as follows:

$188\frac{1}{2}$ Auditor's form No. 5.

Statement by Corporations, etc., under Sec. 32, Rev. Law.

SEC. 32, REV. LAW. Bridges, express, ferry, gravel road, gas, insurance, mining, plank road, stage, steamboat, street railroad, transportation, turnpike, and all other companies and associations incorporated under the laws of this State (other than banks organized under any special or general law of this State), and the corporations required to be assessed by the local assessors, as hereinbefore provided, shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly, etc. (the items printed in statement below). In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information which he can obtain.

Statement by Theodore Gilman of capital stock, etc., as required by sec. 32 of an act of the legislature of the State of Illinois entitled "An act for the assessment of property and the levy and collection of taxes," approved March 30, 1872.

First. { Name of company or association: Keokuk & Hamilton Bridge Co.
{ Location of company or association: Keokuk, Iowa.

Principal office or place of business in the —— of —— ——, school district No. —, T. —, R. —.

		Amount.
Second.	Amount of capital stock authorized.....	1,000,000
	No. of shares into which said capital stock is divided.....No..	10,000

Third.	The amount of capital stock paid up.....	1,000,000
	No. of shares actually issued.....No..	10,000
Fourth.	Market value of the shares of stock.....	None.
	If no market value, then the actual value...	None.
Fifth.	The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property; 1st m't'ge, $1,000,000; unpaid interest thereon $900,000.....	$1,900,000
Sixth.	The assessed valuation of: Lands and structure.. $218,000; Lots..... $———; Personal property.. $———	
	Total assessed valuation of all tangible property of said company.....	218,000

I, Theodore Gilman, do solemnly swear that the above statement is true, according to the best of my knowledge and belief.

THEODORE GILMAN.

Subscribed and sworn to before me this 27th day of August, 1894.

[SEAL.]

S. TABER BAYLES,
Notary Public, Kings County.

Certificate filed in New York county.

NOTE.—These statements to be scheduled by the assessor and returned to the county clerk.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *July* 31*st*, 1895.

I, David Gore, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of the statement by the Keokuk & Hamilton Bridge Company for 1894 now on file in and forming a part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[Seal Auditor's Office, Illinois.]

DAVID GORE,
Auditor of Public Accounts.

[Endorsed:] Hancock Co. No. —. Statement by the Keokuk & Hamilton Bridge Company (under sec. 32). County of ——, town of ——, village (or city) of ——, school district No. —, T. —, R. —. Returned by the assessor and filed in the office of the county clerk this — day of ——, 189-. ——, county clerk. These statements should be all arranged in

alphabetical order and numbered. They should then be scheduled by the assessor, and said schedule and statements returned to the county clerk when report of assessment is made. The county clerk will then transmit statements and schedules to the auditor of public accounts. Exhibit D, K. H. L. Aug. 13, '95. Exhibit D, C. B. & L. Aug. 13, 1895.

189 Next offers and read- in evidence the proceedings of the State board of equalization for 1894, passing upon the capital stock of this bridge, marked Exhibit D 2.

Objection as incompetent. Overruled. Pl'ff excepts.

1st, the title page of which reads: "Proceedings of the Illinois State Board of Equalization, Session of 1894."

Next offer- page 5 of the same book; also pages 6, 7, 8, and 9 (being pages numbered in Roman numerals); then pages beginning after 9, numbered in Arabic figures.

Page V.

Officers.

David Gore, chairman.
W. H. Eubanks, secretary.

Members.

Dist.	Names.	Post-office.	County.
1	George F. McKnight	Auburn Park	Cook county.
2	Edward F. Cullerton	665 W. 20th St., Chicago	Cook.
3	John J. Dahlman	567 Milwaukee Ave., Chicago	Cook.
4	Joseph S. Martin	190 N. State St., Chicago	Cook.
5	George W. Eldredge	Richmond	McHenry.
6	Charles A. Works	Rockford	Winnebago.
7	Thomas P. Pierce	Kewanee	Henry.
8	R. W. Willett	Yorkville	Kendall.
9	John H. Collier	Gibson City	Ford.
10	Cyrus Bocock	Bradford	Stark.
11	Mansfield M. Sturgeon	Rock Island	Rock Island.
190			
12	Campbell S. Hearn	Quincy	Adams.
13	Edward Scott	Jacksonville	Morgan.
14	Robert C. Maxwell	Lincoln	Logan.
15	Joseph C. Glenn	Mattoon	Coles.
16	John J. Funkhouser	Burnt Prairie (White Co.)	Wayne.
17	David B. Owen	Brownstown	Fayette.
18	Joseph F. Long	New Douglas	Madison.
19	Silas Biggerstaff	Belle Prairie	Hamilton.
20	Jesse Bishop	Marion	Williamson.
	David Gore, auditor	Springfield	Sangamon.

Page VI.

Committees.

On equalization of personal property.

John J. Funkhouser, chairman.

John H. Collier.	R. W. Willett.
Edward Scott.	Joseph F. Long.
John J. Dahlman.	George W. Eldredge.

On equalization of lands.

Silas Biggerstaff, chairman.

Thomas P. Pierce.	Charles A. Works.
Joseph S. Martin.	David B. Owen.
C. S. Hearn.	John H. Collier.

191 On equalization of town and city lots.

Cyrus Bocock, chairman.

Joseph C. Glenn.	Robert C. Maxwell.
Edward F. Cullerton.	M. M. Sturgeon.
David B. Owen.	George W. Eldredge.

On assessment of railroad property.

Edward Scott, chairman.

Joseph C. Glenn.	Joseph S. Martin.
Charles A. Works.	Robert C. Maxwell.
Thomas P. Pierce.	Jesse Bishop.

On assessment of capital stock of corporation.

George F. McKnight, chairman.

Cyrus Bocock.	M. M. Sturgeon.
John H. Collier.	C. S. Hearn.
Edward F. Cullerton.	R. W. Willett.

On general equalization.

Jesse Bishop, chairman.

George W. Eldredge.	John J. Dahlman.
John J. Funkhouser.	Joseph F. Long.
Silas Biggerstaff.	George F. McKnight.

Auditing committee.

C. S. Hearn, chairman.

Thomas P. Pierce.	Jesse Bishop.

192 Page VII.

Rules of Order.

Rule 1. The chairman shall take the chair at the hour to which the board may have adjourned: Provided, that in the absence of the chairman the board may elect one of its members temporary

chairman, who shall preside, have the same powers, and perform the same duties as the chairman; shall immediately call the board to order, and on the appearance of a quorum shall cause the minutes of the preceding meeting to be read and the following order of business to be observed:

First. Petitions and communications.

Second. Reports of committees.

Third. Resolutions.

2. The chairman shall decide all questions of order, subject to an appeal to the board at the request of any two members. When an appeal is taken the chairman may address the board upon the point of order in dispute, and the question shall be put, "Shall the decision of the chair stand?"

3. When a motion is made and seconded, it shall be stated by the chairman or secretary before being debated.

4. Every motion shall be reduced to writing, if the chairman or any member require it, and any member may call for a statement of the question, which the chairman may give sitting.

5. After a motion is stated by the chairman or read by the secretary, it shall be considered as in the possession of the board, but may be withdrawn by the member making the motion, by leave of the board before decision.

193 6. While the chairman is putting the question no member shall walk across the room, and while a member is speaking no member shall pass between the member speaking and the chair.

7. When a member is about to speak in debate he shall rise from his seat and address the chair, and when two or more members rise at the same time the chairman shall name the member who shall speak first.

8. No member shall speak more than twice on the same question nor more than once without leave of the board, until every member wishing to speak shall have spoken.

9. When the debate or discussion of a question shall have been concluded the chairman shall put the question in this form, to wit: You who are of the opinion (as the case may be) say "Aye;" those of the contrary opinion say "No;" and the yeas and nays may be called and entered upon the journal at the request of any member.

10. If the chairman doubt or a division be called for, the members shall decide by rising—those in the affirmative first, and afterwards the negative—and the chairman shall determine by count, telling the number.

11. Every member present, when the question is put, shall vote unless excused by the board.

194 Page VIII.

12. In case there is not a quorum present, any number of members shall have power to adjourn; six to call the board to order and send for the absent members.

13. Upon the call of the board, the names of the members shall be called by the secretary and the absentees noted; after which the absentees shall again be called, and those for whom no excuse or

an insufficient one is made shall not receive a certificate of attendance for the time he or they shall have been absent.

14. No member shall absent himself from the board without leave.

15. When a question is under consideration no motion shall be received except to postpone, lay on the table, amend, the previous question, commit, or adjourn.

16. A motion to adjourn shall always be in order and shall be decided without debate.

17. The previous question shall be put in this form: "Shall the main question be now put?" and until it is decided shall preclude all amendments or debate. When, on taking the previous question, the board shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The effect of the main question being ordered shall be to put to an end all debate and bring the board to a direct vote, first
195 upon all amendments reported or pending, being first applied to the amendment last moved and then on the main question. The board may at any time, by a majority vote, close all debate upon a pending amendment or an amendment thereto and cause the question to be put thereon, and this shall not preclude further amendment or debate upon the main subject.

18. Any member may call for a division of the question when the sense will admit of it; and when the question be considered divisible by the chair the same shall be divided; from which decision of the chair an appeal may be taken by any member as a point of order.

19. In forming the committee of the whole the chairman may leave the chair and appoint a chairman to preside.

20. The rules of proceeding in the board shall be observed in committee of the whole, so far as may be applicable.

21. In all cases not provided for in these rules the rules of parliamentary practice comprised in Cushing's Manual shall govern.

22. The committees of the board shall consist as follows:

First. Committee on equalization of personal property.

Second. Committee on equalization of lands.

Third. Committee on equalization of town and city lots.

Fourth. Committee on assessment of railroad property (including capital stock or railroads).

Fifth. Committee on assessment of capital stock of corporations.

Sixth. Committee on general equalization.

Each of said committees to be composed of seven members.

Said committees shall be appointed by the board.

196 23. Upon the completion of the work of either of the first three mentioned committees their report shall be submitted to the board, where said report shall be opened to alteration or amendment by the board or in committee of the whole for at least forty-eight hours after the same has been reported, after which it may be referred to the committee on general equalization.

24. After the reports of the first three named committees shall be referred to the committee on general equalization it shall be the

duty of said committee to compare the values of the different classes of property with each other and make such alteration as said committee shall find necessary to equalize the different classes of property with each other, and report its action thereon to the board: Provided, that for a more equitable equalization of the different classes of property, as aforesaid, if it is thought necessary by said committee to make any changes in the classification of property, as found in the several reports, such changes shall be reported to the board for instructions thereon before making final report.

Page IX.

25. When the committees on the assessment of railroad property and the capital stock of corporations make their final reports, said reports shall lie over two days for the inspection of the members of the board.

26. That a committee of three be appointed by the chairman of the board, to be designated as the auditing committee, whose duty shall be to investigate and report all expenditures of money ordered by the board.

197 27. That the hour of meeting of this board, unless otherwise ordered, shall be nine o'clock a. m.

28. These rules may be altered or amended by a vote of a majority of the board by the member or members wishing such changes or amendments giving one day's notice of the same in writing, setting forth the changes and amendments contemplated, and said rules may be suspended at any time by a two-thirds vote of the members present.

Defendant offers page 23, resolution offered by C. L. Hearn, being resolutions 1, 2, 3, and 4, relating to capital stock.

Rules Governing the Committee on Assessment of Capital Stock of Corporations.

Rule 1. The committee on assessment of capital stock of corporations, other than railroads, in making the assessment of such capital stock, shall be governed by the values as stated by the different corporations in their sworn returns required by section 32 of chapter 120 of the Revised Statutes, entitled "Revenue;" and any reliable information obtained by the committee outside of the sworn returns of the companies shall also be considered by the committee in fixing the value of such capital stock for assessment.

2. In all cases where a statement is made by a corporation and not sworn to, as required by law, the corporation so making such unsworn statement shall be deemed as having failed to make a statement as required by section 32 of chapter 120 of the Revised Statutes, entitled "Revenue;" and in all such cases the committee shall assess the capital stock of such corporations according to the best information obtainable.

198 3. In all cases where a corporation fails, refuses, or neglects to make a return as required by law, the committee shall

assess the capital stock of the corporation so refusing or neglecting from the best information it can obtain.

4. In assessing the capital stock of companies or associations the committee shall take into consideration the marketable cash value of the capital stock of such companies or associations, as quoted by reliable commercial authority, and shall value the same in accordance therewith in making assessments.

On page 31, the report of the committee on those resolutions offered by Hearn and the vote on that report, being the whole of page 31, as follows:

SPRINGFIELD, *Oct.* 3, 1894.

To the honorable State board of equalization.

GENTLEMEN: Your committee on assessment of capital stock of corporations, to whom was referred the proposed amendments to the rules of this board, presented to the board September 25, 1894, by Mr. Hearn, would respectfully report that they have carefully considered the same and would recommend that said amendments be not adopted.

Your committee would further recommend that a committee of three members be appointed by the board for the purpose of formulating rules to govern the assessment of capital stock of all companies and corporations assessable by this board, said committee to report at the next session of this board.

Respectfully submitted.

G. F. McKNIGHT,
CYRUS BOCOCK,
199 J. H. COLLIER,
EDWARD F. CULLERTON,
M. M. STURGEON,
R. W. WILLETT,
Committee on Assessment of Capital Stock.

Mr. Collier moved that the question be divided, and that a separate vote be taken on the adoption of the first and second clauses of the report.

And the motion prevailed.

Mr. Collier moved that the first clause of the report be adopted.

The yeas and nays being called for, those voting in the affirmative were:

Messrs. Biggerstaff, Bishop, Bocock, Collier, Cullerton, Dahlman, Glenn, Long, Maxwell, McKnight, Pierce, Scott, Sturgeon, Willett, and Works—15 votes.

Those voting in the negative were:

Messers. Funkhouser, Hern, Martin, and Owen—4 votes.

And the motion was declared carried.

Mr. Pierce moved that the last clause of the report relating to the appointment of a committee to formulate rules, to be reported at the next session of the board, be laid on the table.

The yeas and nays being called for, those voting in the affirmative were:

Messrs. Bishop, Bocock, Collier, Dahlman, Funkhouser, Long, Maxwell, McKnight, Pierce, Scott, Sturgeon, and Works—12 votes.

Those voting in the negative were:

Messrs. Biggerstaff, Cullerton, Glenn, Hern, Martin, Owen, and Willett—7 votes.

And the motion was declared carried.

On motion of Mr. Biggerstaff—

The board adjourned for committee work.

200 Next offers the whole of page 72, the heading of Schedule A, and the several headings on page 73; on page 76, lines 124, 125, and 126, as follows:

Page 72.

Mr. McKnight, chairman of the committee on assessment of capital stock of corporations, presented the following report from said committee, which was laid over under rule 25:

SPRINGFIELD, *Oct.* 6, 1894.

To the honorable State board of equalization.

GENTLEMEN: Your committee on assessment of capital stock of corporations, other than railroads, have the honor to report that it has carefully examined the returns received by it, and assess the same and have assessed corporations that have failed to make returns from the best information obtainable, and submit a report of assessment as contained in Schedule "A," which is made a part of this report and recommend its adoption.

GEORGE F. McKNIGHT.
CYRUS BOCOCK.
EDWARD F. CULLERTON.
R. W. WILLETT.
M. M. STURGEON.
J. H. COLLIER.

I concur in the above report, with the exception of the assessment of the Pullman's Palace Car Company, the Chicago City Railway Co., West Chicago Street Railroad Company, and the North Chicago Street Railroad Company, on which I will move an amendment.

C. S. HEARN.

201 SCHEDULE "A."—Showing the assessment made by the State board of equalization upon the capital stock of companies and associations incorporated under the laws of the State other than railway companies for the year 1894, being the equalized value of capital stock over the equalized value of tangible property of such corporations assessed by local assessors, accompanying and made a part of the report of the committee on assessment of capital stock of corporations.

Line 124.

No.	Name of company.	County.	Location.	Amount of capital stock paid up, as reported by company.	Equalized value of tangible property assessed by local assessors.	Net assessment of capital stock, being excess of equalized value of capital stock and debt over tangible property assessed by local assessors.	Total amount assessed, being net assessment of capital stock by the board and equalized value of tangible property assessed by local assessors.
124	Dallas Transportation Company.	Hancock.	Dallas City.	$8,000	$5,640	$860	$6,500
125	F. M. King Company.	Hancock	Augusta.	15,000	2,000	500	2,500
126	Keokuk and Hamilton Bridge Co.	Hancock	Keokuk, Ia.	1,000,000	204,920	30,080	235,000

202 Next offer and read in evidence the certificate at the back of the book dated August 5, 1895, as follows:

SPRINGFIELD, *August* 5, 1895.

I, David Gore, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of the record of proceedings of the State board of equalization, session of 1894, now on file and forming a part of the records of this office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office, at Springfield, the day and year first above written.

(Signed) DAVID GORE, [SEAL.]
Auditor of Public Accounts.

Next offer and read an exemplified copy of the proceedings in a suit in equity in the Supreme Court of the U. S., the original case No. 5, between The State of Iowa, plaintiff, and State of Illinois, defendant, Exhibit "E," as follows:

Supreme Court of the United States, October Term, 1891.

THE STATE OF IOWA
vs.
THE STATE OF ILLINOIS.

At the Capitol of the United States, in the city of Washington and District of Columbia, being the present seat of the National Government of the United States, on the second Monday of October (being the twelfth day of the same month), in the year of our Lord one thousand eight hundred and ninety-one, and of the Inde-

pendence of the United States the one hundred and sixteenth, the Supreme Court of the United States met agreeably to law.

203 And afterwards, to wit, on the 17th day of November, A. D. 1891, a motion for leave was filed in the words and figures following, viz:

In the Supreme Court of the United States.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS, Defendant.

Motion for Leave.

Comes now Jno. Y. Stone, att'y gen'l of the State of Iowa, for leave to file the following papers in the foregoing-entitled cause, those filed by the State of Illinois being at the request of the att'y gen'l of that State:

1. Bill of complaint of the State of Iowa.
2. Answer of the State of Illinois.
3. Cross-bill of the State of Illinois.
4. Reply of the State of Iowa.
5. Answer of Iowa to respondent's cross-bill.

And it is further moved that, inasmuch as this is a suit to determine a boundary between two States, involving questions relating to taxation and the collection of revenue between States, it be advanced for hearing at an early day, both parties appearing and consenting thereto, as shown in the bills and answers herein.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

204 (Endorsed:) Supreme Court U.S., 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois.

Motion for Leave to File Bill, Answer, Cross bill, Answer to Cross-bill, & Replication & to Assign Cause for Argument. Filed Nov'r 17, 1891.

And on the same day, to wit, on the 17th day of November, A. D. 1891, the following entry appears of record, viz:

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } 11, Original.

On motion of Mr. John Y. Stone, of counsel for the complainant, leave is hereby granted to file the bill of complaint, answer, cross-bill, answer to cross-bill, and replication of the complainant to answer of defendant herein.

Mr. Stone also submitted to the consideration of the court a motion to fix a day for the argument of the case.

And on the same day, to wit, on the 17th day of November, A. D. 1891, an appearance of counsel for the complainant was filed in the words and figures following, viz:

205 Supreme Court of the United States, October Term, 1891.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 11, Orig'l.

The clerk will enter my appearance as counsel for the complainant.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

NOTE.—Must be signed by a member of the bar of Supreme Court United States. Individual and not firm names must be signed.

(Endorsed:) Supreme Court U. S., October term, 1891. No. 11, original. Appearance for compl't. Filed Nov. 17, 1891.

And on the same day, to wit, on the 17th day of November, A. D. 1891, a bill of complaint was filed in the words and figures following, viz:

In the Supreme Court of the United States.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS, Defendant. } Equity Bill to Establish Boundary.

To the judges of the Supreme Court of the United States:

Par. 1. Complainant, The State of Iowa, by its attorney general, complaining, shows to this honorable court that said State of Iowa is one of the States comprising the United States of America, and said State of Illinois is another of said States.

206 Par. 2. That prior to the treaty between England, France, and Spain, in 1763, and at the time of said treaty, the territory now comprising the State of Iowa was under the dominion of France, and the territory now comprising the State of Illinois was under the dominion of England (Great Britain); that by that treaty the middle of the River Mississippi was made the boundary lines between the British and French possessions in North America.

Par. 3. That by the treaty of Paris between Great Britain and the United States the territory comprising the State of Illinois passed to the United States, and by the purchase of the Louisiana Territory by the United States from France the territory comprising the State of Iowa passed to the United States.

Par. 4. That the boundary between the territory comprising the State of Illinois & Iowa remained the middle of the River Mississippi as fixed by said treaty of 1763.

Par. 5. That by the act of Congress of April 18th, 1818, known as the act "enabling the people of Illinois to form a State constitution,'

the northern and western boundaries of Illinois *is* defined as follows: Starting in the middle of Lake Michigan at north latitude 42° 30′, "thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river," and the constitutions of Illinois of 1818, 1848, and 1870 define said boundaries the same; yet said State of Illinois and its several municipalities bordering on said Mississippi river claim the right to and do assess and tax, as in Illinois, all bridges and other structures in said river from the Illinois shore to the middle of the steamboat channel or channel of said river usually traversed by steam and other crafts in carrying the commerce of said river, regardless of whether said channel is east or west of the middle
207 of the main body or arm of said river; that said authorities in Illinois value, assess, and tax, as in Illinois, the bridge of the Keokuk & Hamilton Bridge Company across said river from Keokuk, Iowa, to Island No. 4, in section 30, T. 5 N., R. 8 W., in Hancock county, Illinois, from the west shore of said island westward 2,462 feet to the east end of the draw of said bridge, and to a point not over 580 feet east from the Iowa shore of said river, and to a point 941 feet west of the middle of said main arm or body of said river at that point.

Par. 6. That the steamboat channel, or channel of the river where boats ordinarily run in carrying the commerce of the river, varies from side to side of said river, sometimes next to the Illinois shore and then next to the Iowa shore, and at other times crosswise, at most points in said river shifting from place to place as the sands of its bed are changed by the current at every stage of change of water; that at the point of the Keokuk & Hamilton bridge the river bed is rock and not subject to much change; that at that point, were it not for the bridge, the middle of the steamboat channel would be, and was before said bridge was erected, fully 300 feet east of the east end of the draw in said bridge, or 880 feet from the Iowa shore of said river and 2,162 feet from the shore of said river in Illinois on Island No. 4; that at places in said river there are two or more channels equally accessible and useful for the navigation of said river by steamboats and other crafts carrying the commerce of said river; that at said Keokuk & Hamilton bridge the channel used by steamboats is partly artificial, constructed by excavation of rock from the river bed to facilitate the approach to the lock of the U. S. canal immediately north from the bridge.

Par. 7. That the State of Iowa claims the right to tax all bridges across said river to the middle thereof, and, as of right it may do, taxes said Keokuk & Hamilton bridge to the middle thereof
208 between the east and west abutments of said bridge—that is, the west approach and abutment 200 feet and 1,096 feet of the bridge proper—thereby treating, for convenience of taxation, the middle of said bridge between abutments as the middle of said river at that point, but really 225 — less than one-half the distance across the main arm or body of said river at that point.

Par. 8. That the State of Illinois and its municipalities value, assess, and tax as in Illinois 716 feet of said bridge actually assessed

and taxed in Iowa, and 225 feet of said bridge in addition thereto located in Iowa, but not taxed in said State of Iowa.

Par. 9. That the Keokuk & Hamilton Bridge Company, owner of said Keokuk and Hamilton bridge, is a corporation of both said States consolidated, and complains of such double taxation.

Par. 10. That litigation is now pending over such taxation and is liable at any time to arise over the taxation of any of the other bridges across said river between said States, now numbering nine.

Par. 11. To the end that the line between said States be definitely fixed by the only court having jurisdiction to do so, your oratrix prays that this court take jurisdiction of this bill; that the State of Illinois be summoned and requested to answer this bill, waiving such answer being on oath, and the cause be advanced to an early hearing, and upon final hearing definitely settle the boundary between said States at said several bridges; and for such other relief as shall appear equitable.

And, as in duty bound, will ever pray, &c.

JNO. Y. STONE,
Att'y Gen'l of Iowa, for Complainant.

JAMES C. DAVIS, *Of Counsel.*

209 (Endorsed:) Supreme Court U. S., 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Bill of complaint. Filed Nov. 17, 1891.

And on the same day, to wit, on the 17th day of November, A. D. 1891, an answer was filed in the words and figures following, viz:

In the Supreme Court of the United States.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS, Defendant. } Bill to Establish Boundary.

Answer of the State of Illinois to said Bill.

The State of Illinois, by George Hunt, its attorney general, for answer to the bill filed herein by the State of Iowa or so much thereof as it is advised to answer, answering, says:

Respondent admits the statements in said bill contained in the first, second, third, fourth, and fifth paragraphs thereof.

Respondent denies that the boundary lines between said States of Iowa and Illinois is the middle of the Mississippi river, but insists is the middle of the steamboat channel or channel most commonly used by boats in carrying the commerce of said river, whether at or east or west of the middle of said river; admit- that the State and municipalities in the State of Illinois claim the right to and do tax bridge and other structures in said river to the middle of such steamboat channel or channel of commerce, regardless of whether such channel is east or west of the middle of the main body or arm of said river, and do value, assess, and tax the Keokuk & Hamilton

bridge to the draw and considerably west of the middle of the main body or arm of said river, but the exact distance from either shore this respondent is unable to state.

210 Admit- the steamboat channel or channel of commerce of said river is first near one shore and then near the other, and at other places nearly across the river.

Denies that the middle of the steamboat channel or channel of commerce of said river at said Keokuk & Hamilton bridge is east of the east end of the draw of said bridge.

Denies the right of the State of Iowa to tax said Keokuk & Hamilton bridge to any point thereof east of the east end of the draw thereof or any other bridge east of the middle of the steamboat channel or channel of commerce of said river, though such channel may be largely west of the middle of the main body or arm of said river.

Admit- the statements of paragraph 9 of said bill.

And now, having fully answered said bill, prays that this cause be advanced and the line between said States be established and respondent be discharged with its reasonable costs, &c.

And, as in duty bound, will ever pray, &c.

GEO. HUNT,
Attorney General, State of Illinois, for Defendant.

(Endorsed:) Supreme Court U. S., 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Answer to bill of complaint. Filed Nov. 17, 1891.

And on the same day, to wit, on the 17th day of November, A. D. 1891, a replication was filed in the words and figures following, viz:

In the Supreme Court of the United States.

211 THE STATE OF IOWA *v.* THE STATE OF ILLINOIS. } Equity. Bill to Establish Boundary.

Replication to Answer of Defendant.

The State of Iowa, by its attorney general, John Y. Stone, for replication to the answer of the defendant, The State of Illinois, says that the statements in said answer, so far as the same traverse or deny the statements in the complainant's bill, are not true, and that the statements in said complainant't bill are true.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

JAMES C. DAVIS, *Of Counsel.*

(Endorsed:) Supreme Court U. S., 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Replication of the State of Iowa. Filed Nov. 17, 1891.

And on the same day, to wit, on the 17th day of November, A. D. 1891, a cross-bill was filed in the words and figures following, viz:

In the Supreme Court of the United States.

THE STATE OF IOWA *v.* THE STATE OF ILLINOIS. } Bill to Establish Boundary. Equity.

THE STATE OF ILLINOIS *vs.* THE STATE OF IOWA. } Equity. Cross-bill to Establish Boundary.

212 Par. 1. Complainant in cross-bill, The State of Illinois, having answered the bill of complaint filed herein by the State of Iowa, files this cross-bill of complaint against The State of Iowa in this the Supreme Court of the United States to define the boundary line between the States of Illinois and Iowa at the several bridges across the Mississippi river and the extent to which each State and its municipalities may tax said bridges respectively, and shows to this honorable court that there now exists nine bridges across said river between said States, the most southern of which is the Keokuk & Hamilton Bridge Company's railroad and wagon bridge, and the most northern of which is the Dunlieth & Dubuque Bridge Company's railroad bridge.

Par. 2. That for the purpose of taxation the State of Illinois and its municipalities claim the right to assess and tax said respective bridges to the middle of the channel of commerce or steamboat channel—that is, the channel usually used by steamboats and other crafts navigating said river; that on the part of the State of Iowa and its municipalities it is claimed that each State has the right to assess and tax to the middle of the main arm or body of the said river, regardless of where the channel of commerce or steamboat channel—that is, that part of the river usually traversed by steam or other vessels carrying the commerce of said river—may be.

Par. 3. That the supreme court of the State of Iowa, in case of The Dunlieth & Dubuque Bridge Company *vs.* The County of Dubuque, 55 Iowa, 558, 564, hold the authorities in Iowa have the right to tax such structures to the middle of the main arm or body of the stream and no further, though at the point where such structure is situated the channel or part of the river followed by steamboatmen in navigating the river is far east of the middle of such main body of the stream.

213 Par. 4. That, following the decision in that case, the authorities in Iowa assess and tax structures to the middle of the main body of said river.

Par. 5. That at the point of the location of the said Keokuk & Hamilton bridge the main body of said river before the construction of said bridge was between the Iowa shore at Keokuk, Lee county, Iowa, and the west shore of Island No. 4, in section 30, township 5 north, range 8 west, located in the city of Hamilton, town of Montebello, Hancock county, Illinois, a breadth of about 3,042 feet; that in constructing said bridge a solid approach is extended from the shore at Keokuk into the river 200 feet and from said shore on Island No. 4, in Illinois, about 700 feet, and the main

body of said river confined between the abutments to said bridge, 2,192 feet apart, and said bridge consists of said east and west abutments, eleven piers, a draw next to the west or Iowa abutment, 380 feet, and 10 spans—together 1,812 feet.

Par. 6. That the middle of the steamboat channel or that part of the river usually traversed by steamboatmen in navigating said river is at or near the east end of said draw or pivot span, about 380 feet from the west abutment and 1,812 feet from the east abutment.

Par. 7. That the assessor of Illinois in assessing said bridge values the bridge to the east end of said draw and assesses the same against that part of said bridge in Illinois, and the authorities in Iowa value and assess said bridge to the middle thereof, 1,096 feet east from the west abutment, as in the State of Iowa; that thereby 716 feet of said bridge is valued and assessed both in Illinois and Iowa; that litigation is now pending in the lower courts between said bridge company and the authorities over said assessments.

Par. 8. That the same trouble and complications are liable to arise over the assessment of any other of said bridges.

214 Par. 9. No other court having jurisdiction to settle in an authoritative way the extent to which said bridge structures can be legally assessed and taxed, and to the end that the boundary lines between the States of Illinois and Iowa at said several bridges may be defined and settled, the State of Illinois prays that the State of Iowa be made defendant to this bill and summoned and required to answer this bill, and that upon the final hearing this court define and establish at each of said bridges the boundary lines between the States of Illinois and Iowa, to which points the respective States may tax.

Par. 10. That as this matter relates to the revenue and is of great public importance, that the same be advanced on the docket and heard at the earliest practicable day, to the end that the revenue may be collected without delays by litigation ou-r such right to tax.

And, as is duly bound, complainant will ever pray, etc.

GEO. HUNT,
Attorney General, State of Illinois,
for Complainant in Cross-bill.

(Endorsed:) Supreme Court U. S., 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Cross-bill of the State of Illinois. Filed Nov. 17, 1891.

And on the same day, to wit, on the 17th day of November, A. D. 1891, an answer to cross-bill was filed in the words and figures following, viz:

215 In the Supreme Court of the United States.

THE STATE OF IOWA
v.
THE STATE OF ILLINOIS. } Equity. Bill to Establish Boundary.

THE STATE OF ILLINOIS, Complainant,
vs.
THE STATE OF IOWA, Defendant. } Equity. Cross-bill to Establish Boundary.

Answer of Defendant to the Cross-bill.

Respondent, The State of Iowa, by John Y. Stone, its attorney general, for answer to the cross-bill of complaint filed herein or so much thereof as it is advised is necessary to answer, answering, says:

Par. 1. Admit- that there now exists nine bridges across the Mississippi river where it forms the boundary between said States of Illinois and Iowa, the most southerly of which is the bridge of the Keokuk & Hamilton Bridge Company, and the most northerly is the bridge of the Dunlieth & Dubuque Bridge Company.

Par. 2. Admit- that said State of Illinois and its several municipalities bordering on said river claim the right to tax said bridges from the Illinois shore of said river to the middle of the channel of commerce or steamboat channel—that is, the channel usually used by steamboats and other crafts in navigating said river—and that this respondent, The State of Iowa, and its several municipalities bordering on said river claim the right to and do tax said several bridges to the middle of the main arm or body of said river, regardless of where the channel of commerce or steamboat channel—that is, that part of said river usually traversed by steam or other
216 vessels carrying the commerce of said river—may be.

Par. 3. Respondent denies the right of the State of Illinois or any of its municipalities to tax any of said bridges or any other structure in said river west of or on the Iowa side of the middle of the main arm or body of said river.

Par. 4. Respondent admits as true the statements in said cross-bill contained in paragraph five thereof.

Par. 5. Respondent denies the statements of paragraph six of said cross-bill as stated, but admits that prior to the construction of the Keokuk & Hamilton bridge aforesaid the middle of the steamboat channel, or that part of the river at that point usually traversed by steamboatmen in navigating said river, was and now is considerably west of the middle of the main arm or body of said river; the exact distance respondent is unable to state, but is informed and believes about 960 feet east of the Iowa shore of said river and about 2,082 feet from the Illinois shore on Island No. 4 in said bill mentioned.

Par. 6. Respondent is informed and believes that the State of Illinois and its municipalities, in which the east end of said Keokuk & Hamilton bridge is situated, assess and tax as in Illinois fully 716 feet of said bridge, which is located in Iowa and taxed by the authorities in Iowa.

Par. 7. Respondent admits the statements of paragraph seven of said cross-bill.

Par. 1. Respondent admits the statements of paragraph eight of said cross-bill.

Par. 2. And now, having fully answered said cross-bill, prays that this suit be advanced and that upon the final hearing said boundary may be established.

And, as in duty bound, will ever pray, &c.

JNO. Y. STONE,
Att'y Gen'l of Iowa.

JAMES C. DAVIS, *Of Counsel.*

217 (Endorsed:) Supreme Court U. S., 1891, October term. No. 11, original. The State of Iowa, complainant, *vs.* The State of Illinois. Answer of State of Iowa to cross-bill of State of Illinois. Filed Nov. 17, 1891.

And afterwards, to wit, on the 7th day of March, A. D. 1892, the following entry appears of record, viz:

Supreme Court of the United States, October Term, 1891.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 11, Original.

On consideration of the motion to fix a day for the argument of this cause—

It is now here ordered by the court that said motion be, and the same is hereby, granted, and the cause assigned for argument on the second Monday of the next term, after the cases heretofore assigned for that day.

March 7, 1892.

And afterwards, to wit, on the 14th day of October, A. D. 1892, a motion and consent to reassign cause was filed in the words and figures following, viz:

Supreme Court of the United States, October Term, A. D. 1892.

218 THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 5, Original Proceeding.

Comes now Geo. Hunt, attorney general of the State of Illinois, and, on behalf of said defendant, moves that said cause, which has been assigned for hearing on 17th inst., be reassigned for a hearing on a day not earlier than the 4th Monday of November prox. As reasons for said motion, said attorney general states that during the week beginning October 17 he is compelled in the discharge of his official duties to be in attendance at the supreme court of Illinois, now in session in said State, and owing to the pressure of official

business he has been unable up to this time to prepare for the hearing of said —. He further states that he has telegraphed to the attorney general of Iowa to assent to such reassignment and anticipates that the same will be given.

GEORGE HUNT,
Attorney for Defendant.

(*Telegram.*)

KEOKUK, IOWA, *Oct.* 15, 1892.

To Jas. McKenney, clerk Supreme Court, Wash'n, D. C.:

I consent to reassignment of case of State of Iowa *vs.* State of Illinois, as requested by Att'y Gen'l Hunt.

JAMES C. DAVIS.

(Endorsed:) Supreme Court U. S., October term, 1892. No. 5, original. The State of Iowa, complainant, *vs.* The State of Illinois. Motion by counsel for defendant to reassign case for November 28, and consent of counsel for complainant. Filed Oct. 14, 1892. James H. McKenney, clerk.

219 And afterwards, to wit, on the 17th day of October, A. D. 1892, the following entry appears of record, viz:

Supreme Court of the United States, October Term, 1892.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

Ordered by the court that this cause be, and the same is hereby, reassigned for argument on Monday, November 28th, next, after the cases heretofore assigned for that day.

October 17, 1892.

And afterwards, to wit, on the 28th day of November, A. D. 1892, the following entry appears of record, viz:

Supreme Court of the United States, October Term, 1892.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

This cause was submitted to the consideration of the court on the record and printed arguments by Mr. John Y. Stone and Mr. James C. Davis, of counsel for the complainant, and Mr. George Hunt, of counsel for the defendant.

November 28, 1892.

220 And afterwards, to wit, on the 3rd day of January, A. D. 1893, the following opinion and entry appear of record, viz:

Supreme Court of the United States, October Term, 1892.

THE STATE OF IOWA
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

JANUARY 2, 1893.

Mr. Justice FIELD delivered the opinion of the court:

The Mississippi river flows between the States of Iowa and Illinois. It is a navigable stream and constitutes the boundary between the two States, and the controversy between them is as to the position of the line between its banks or shores which separates the jurisdiction of the two States for the purposes of taxation and other purposes of government.

The complainant, The State of Iowa, contends that for taxation and for all other purposes the boundary line is the middle of the main body of the river, taking the middle line between its banks or shores without regard to the "steamboat channel," as it is termed, or deepest part of the stream, and that to determine the banks or shores the measurements must be taken when the water is in its natural or ordinary stage, neither swollen by floods nor shrunk by droughts.

On the other hand, the defendant, The State of Illinois, claims that for taxation and all other purposes its jurisdiction extends
221 to the middle of the "steamboat channel" of the river, wherever that may be, whether on its east or west bank—the channel upon which commerce on the river by steamboats or other vessels is usually conducted, and which for that reason is sometimes designated as "the channel of commerce."

The State of Iowa in its bill alleges that prior to and at the time of the treaty between England, France, and Spain, in 1763 (Jenkinson's Collection of Treaties, vol. 3, p. 177), the territory now comprising the State of Iowa was under the dominion of France and the territory now comprising the State of Illinois was under the dominion of Great Britain, and that by the treaty named the middle of the River Mississippi was made the boundary line between the British and French possessions in North America.

That by the treaty of Paris between Great Britain and the United States, which was concluded September 3, 1783 (*id.*, p. 410, art. 11, and 8 Stat., 80), the territory comprising the State of Illinois passed to the United States, and that by the purchase of Louisiana from France, under the treaty of 1803 (8 Stat., 208), the territory comprising the State of Iowa passed to the United States.

That the boundary between the territory comprising the States of Illinois and Iowa remained the middle of the River Mississippi, as fixed by the treaty of 1763.

That by act of Congress of April 18, 1818, known as the act enabling the people of Illinois to form a State constitution (3 Stat., 428), the northern and western boundaries of Illinois were defined as follows: Starting in the middle of Lake Michigan, at north latitude forty-two degrees and thirty minutes, "thence west to the middle of the Mississippi river, and thence down along the middle

of that river to its confluence with the Ohio river," and that the constitutions of Illinois of 1818, 1848, and 1870 defined the boundaries in the same way.

222 And the bill further alleges that the State of Illinois and its several municipalities bordering on the Mississippi river claim the right to assess and do assess and tax, as in Illinois, all bridges and other structures in the river from the Illinois shore to the middle of the steamboat channel or channel of the river usually traversed by steam and other crafts in carrying the commerce of the river, whether such channel is east or west of the middle of the main body or arm of the river, and that they thus assess and tax, as in that State, the bridge of the Keokuk and Hamilton Bridge Company across the river from Keokuk, Iowa, to Island No. Four, in Hancock county, Illinois, from the west shore of the island westward 2,462 feet to the east end of the draw of the bridge, and to a point not over 580 feet east from the Iowa shore of the river and 941 feet west of the middle of the main arm or body of the river at that point.

That the steamboat channel or channel of the river where boats ordinarily run in carrying the commerce of the river varies from side to side of the river, sometimes being next to the Illinois shore and then next to the Iowa shore, and at most points in the river shifting from place to place as the sands of its bed are changed by the current of the water; that at the point of the Keokuk and Hamilton bridge mentioned the river bed is rock and not subject to much change; that at that point, were it not for the bridge, the middle of the steamboat channel would be, and was before the bridge was erected, fully 300 feet east of the east end of the draw in the bridge, or 880 feet from the Iowa shore of the river and 2,162 feet from the shore of the river in Illinois on Island No. Four; that at places in the river there are two or more channels equally accessible and useful for navigation by steamboats and other crafts carrying the commerce of the river, and that at the Keokuk and Hamilton bridge

223 the channel used by steamboats is partly artificial, constructed by excavation of rock from the river bed to facilitate the approach to the lock of the United States canal immediately north of the bridge.

That the State of Iowa claims the right to tax all bridges across the river to the middle thereof, and does tax the Keokuk and Hamilton bridge to its middle, between the east and west abutments thereof—that is, the west approach and abutment, 200 feet, and 1,096 feet of the bridge proper—thereby treating, for convenience of taxation, the middle of the bridge between abutments as the middle of the river at that point, but which is in fact 225 feet less than one-half the distance across the main arm or body of the river at that point.

That the State of Illinois and its municipalities assess and tax, as in the State, 716 feet of the bridge actually assessed and taxed in Iowa, and 225 feet of the bridge in addition thereto, located in Iowa, but not taxed in that State.

That the Keokuk and Hamilton Bridge Company, owner of the

Keokuk and Hamilton bridge, is a corporation of both of said States consolidated, and complains of such double taxation.

That litigation is now pending over such taxation, and is liable at any time to arise over the taxation of any of the other bridges across the river between the said States, now nine in number.

To the end, therefore, that the line between the States may be definitely fixed by the only court having jurisdiction to do so, the complainant prays that this court will take jurisdiction of this bill, and that the State of Illinois be summoned and requested to answer it, waiving such answer being on oath, and that upon the final hearing this court will definitely settle the boundary between the States at the said several bridges.

To this bill the State of Illinois appeared by its attorney general and filed its answer, which denied that the boundary line between the States of Iowa and Illinois is the middle of
224 the Mississippi river, and insisted that it is the middle of the steamboat channel, or channel commonly used by boats in carrying the commerce of the river, whether east or west of the middle of the river. It admitted that the State and its municipalities claimed the right to tax and did tax bridges and other structures in the river to the middle of the steamboat channel of commerce, whether such channel was east or west of the middle of the main body or arm of the river, and did assess and tax the Keokuk and Hamilton bridge to its draw and west of the middle of the main body or arm of the river, and that the steamboat channel or channel of commerce is first near one shore and then near the other, and at other places nearly across the river. But it denied the right of the State of Iowa to tax the bridges mentioned crossing the Mississippi river to any point east of the middle of the steamboat channel or channel of commerce of that river.

To the answer a replication was filed by the State of Iowa.

At the time of filing its answer the State of Illinois filed also its cross-bill, in which it alleges that there exist nine bridges across the Mississippi river between the States, the most southern of which is the Keokuk and Hamilton railroad bridge, and the most northern the Dunlieth and Dubuque Bridge Company's railroad bridge.

That for the purposes of taxation the State of Illinois and its municipalities claim the right to assess and tax the respective bridges to the middle of the channel of commerce or steamboat channel—that is, the channel usually used by steamboats and other crafts navigating the river—and that on the part of the State of Iowa and its municipalities it is claimed that each State has the right to assess and tax to the middle of the main arm or body of the river, regardless of where the channel of commerce or steamboat channel may be.

225 That the supreme court of Iowa, in the case of The Dunlieth and Dubuque Bridge Company *v.* The County of Dubuque (55 Iowa, 558), held that the authorities in Iowa have the right to tax such structures to the middle of the main arm or body of the stream and no further, though at the point where such structure is situated the channel or part of the river followed by steam-

boat men in navigating the river is far east of the middle of such main body of the stream.

That following the decision in that case the authorities in Iowa assess and tax such structures to the middle of the main body of the river.

That at the point of the location of the Keokuk and Hamilton bridge the main body of the river, before the construction of the bridge, was between the Iowa shore at Keokuk, Lee county, Iowa, and the west shore of Island No. Four, located in the city of Hamilton, Hancock county, Illinois, a breadth of about 3,042 feet; that in constructing the bridge a solid approach is extended from the shore at Keokuk into the river 200 feet, and from the shore of Island No. Four, in Illinois, about 700 feet, and the main body of the river confined between the abutments to the bridge 2,192 feet apart, and the bridge consists of the east and west abutments, eleven piers, a draw next to the west or Iowa abutment of 380 feet, and ten spans, together 1,812 feet.

That the middle of the steamboat channel, or that part of *of* the river usually traversed by steamboat men in navigating the river, is at or near the east end of the draw or pivot span, about 300 feet from the west abutment and 1,812 feet from the east abutment.

That the assessor in Illinois in assessing the bridge values the bridge to the east end of the draw and assesses the same against that part of the bridge in Illinois, and the authorities in Iowa
226 value and assess the bridge to the middle thereof, 1,096 feet east from the west abutment, as in the State of Iowa; that thereby 716 feet of the bridge is valued and assessed both in Illinois and Iowa; that litigation is now pending in the lower courts between the bridge company and the authorities over the assessments, and that the same trouble and complications are liable to arise over the assessment of any other of the bridges.

To the end, therefore, that the boundary line between the States of Illinois and Iowa at said several bridges may be defined and settled, the State of Illinois prays that the State of Iowa be made defendant to this cross-bill and required to answer it, and that upon the final hearing the court will define and establish at each of the bridges the boundary lines between the States of Illinois and Iowa, to which points respective States may tax. To this cross-bill the defendant, The State of Iowa, answered, admitting the existance of nine bridges across the Mississippi river where it forms the boundary between the States of Illinois and Iowa, and that the State of Illinois and its several municipalities bordering upon the river claim the right to tax said bridges from the Illinois shore of the river to the middle of the channel of commerce or steamboat channel, and that the State of Iowa and its municipalities bordering on the river claim the right to tax and do tax the several bridges to the middle of the main arm or body of the river, regardless of where the channel of commerce or steamboat channel—that is, that part of the river usually traversed by steam or other vessels carrying the commerce of the river—may be. It therefore prays that upon the

final hearing the boundary lines between the two States may be established to which the respective States may tax.

By setting down the case for hearing on the bill, answer, and replication (without taking any testimony) and on the cross-bill and the answer to it all the facts alleged in the answer to
227 the original bill, as well as *though* those alleged in the cross-bill and not denied in the answer, are thereby admitted.

When a navigable river constitutes the boundary between two independent States, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each State in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is, therefore, laid down in all the recognized treatises on international law of modern times that the middle of the channel of the stream marks the true boundary between the adjoining States up to which each State will on its side exercise jurisdiction. In international law, therefore, and by the usage of European nations, the term "middle of the stream," as applied to a navigable river, is the same as the middle of the channel of such stream, and in that sense the terms are used in the treaty of peace between Great Britain, France, and Spain, concluded at Paris in 1763. By the language "a line drawn along the middle of the River Mississippi from its source to the River Iberville," as there used, is meant along the middle of the channel of the River Mississippi. Thus Wheaton, in his "Elements of International Law" (8th ed.) (192), says:

"Where a navigable river forms the boundary of conterminous States, the middle of the channel, or thalweg, is generally taken as the line of separation between the two States, the presumption of law being that the right of navigation is common to both; but this presumption may be destroyed by actual proof of prior occupancy and long undisturbed possession, giving to one of the riparian proprietors the exclusive title to the entire river."

And in sec. 202, whilst thus stating the rule as to the boundary line of the Mississippi river being the middle of the channel,
228 states that the channel is remarkably winding, "crossing and recrossing perpetually from one side to the other of the general bed of the river."

Mr. Creasy, in his "First Platform on International Law," expresses the same doctrine. He says:

"It has been stated that where a navigable river separates neighboring States the thalweg or middle of the navigable channel forms the line of separation. Formerly a line drawn along the middle of the water, the medium *filum aquæ*, was regarded as the boundary line, and still will be regarded *prima facie* as the boundary line, except as those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the medium *filum*. When this is the case the middle of the channel of traffic is now considered to be the line of demarcation" (p. 223).

Mr. Creasy also refers to the language of Dr. Twiss on the same subject, who observes that "Grotius and Vattel speak of the river as the line of demarcation between two jurisdictions, but that modern publicists and statesmen prefer the more accurate and more equitable boundary of the navigable mid-channel. If there be more than one channel of a river, the deepest channel is regarded as the navigable mid-channel for the purpose of territorial demarcation, and the boundary will be the line drawn along the surface of the stream corresponding to the line of deepest depression of its bed. The islands on either side of the mid-channel are regarded as appendages to either bank, and if they have once been taken possession of by the nation to whose bank they are appendant a change in the mid-channel of the river will not operate to deprive the nation of its possession, although the water frontier line will follow the change of the mid-channel."

Halleck, in his "Treatise on International Law," is to the same effect. He says:

"Where the river not only separates the conterminous
229 States, but also their territorial jurisdictions, the thalweg or middle channel forms the line of separation through the bays and estuaries through which the waters of the river flow into the sea. As a general rule this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very unequal parts; but the deeper channel may be less suited or totally unfit for the purposes of navigation, in which case the dividing line would be in the middle of the one which is best suited and ordinarily used for that object" (vol. 1, ch. 6, sec. 23.)

Woolsey, in his "International Law," repeats the same doctrine, and says:

"Where a navigable river forms the boundary between two States both are presumed to have free use of it, and the dividing line will run in the middle of the channel unless the contrary is shown by long occupancy or agreement of the parties. If a river changes its bed, the line through the old channel continues, but the equitable right to the free use of the stream seems to belong, as before, to the State whose territory the river has forsaken" (sec. 58).

The middle of the channel of a navigable river between independent States is taken as the true boundary line *from* the obvious reason that the right of navigation is presumed to be common to both in the absence of a special convention between the neighboring States or long use of a different line equivalent to such a convention.

Phillmore, in his "Commentaries on International Law," in the chapter upon acquisitions, speaks of decisions upon the law of property as incident to neighborhood proceeding upon the principle that "mid-channel" is the line of demarcation between the neighbors (vol. 1, 239).

The reason and necessity of the rule of international law
230 as to the mid-channel being the true boundary line of a navigable river separating independent States may not be as cogent in this country, where neighboring States are under the same

General Government, as in Europe, yet the same rule will be held to obtain unless changed by statute or usage of so great a length of time as to have acquired the force of law.

As we have stated, in the international law and by the usage of European nations the terms "middle of the stream" and "mid-channel" of a navigable river are synonymous and interchangeably used. The enabling act of April 18, 1818 (3 Stat., chap. 67, p. 428), under which Illinois adopted a constitution and became a State and was admitted into the Union, made the middle of the Mississippi river the western boundary of the State. The enabling act of March 6, 1820 (3 Stat., chap. 22, sec. 2, p. 545), under which Missouri became a State and was admitted into the Union, made the middle of the main channel of the Mississippi river the eastern boundary so far as its boundary was coterminous with the western boundary of Illinois. The enabling act of August 6, 1846 (9 Stat., 56), under which Wisconsin adopted a constitution and became a State and was admitted into the Union, gives the western boundary of that State, after reaching the River St. Croix, as follows: "Thence down the main channel of said river to the Mississippi, thence down the center of the main channel of that" (Mississippi) "river to the northwest corner of the State of Illinois." The northwest corner of the State of Illinois must therefore be in the middle of the main channel of the river which forms a portion of its western boundary. It is very evident that these terms, "middle of the Mississippi river" and "middle of the main channel of the Mississippi river" and "the center of the main channel of that river," as thus used, are synonymous. It is not at all likely that the Congress of the United
231 States intended that those terms, as applied to the Mississippi river separating Illinois and Iowa should have a different meaning when applied to the Mississippi river separating Illinois from Missouri or a different meaning when used as descriptive of a portion of the western boundary of Wisconsin. They were evidently used as signifying the same thing.

The question involved in this case has been elaborately considered, both by the supreme court of Iowa and the supreme court of Illinois, in cases relating to the assessment and taxation of bridges crossing the Mississippi river as to the point to which the jurisdiction of each State for taxation extends, and they differed in their conclusions. In Dunlieth and Dubuque Bridge Co. *v.* The County of Dubuque (55 Iowa, 558, 564) the supreme court of Iowa, after observing that the act of Congress admitting Iowa into the Union and the constitution of Iowa in its preamble declare that the eastern boundary of the State shall be "the middle of the main channel of Mississippi river," proceeds to inquire what line is understood by those words, "middle of the main channel." The defendant maintained that the deep water of the stream used in the navigation of the river was meant, while the plaintiff insisted that the words described the bed in which the stream of the river flows—that is, the bed over which the water flows from bank to bank. The court thought that the words, when applied to rivers generally, without the purpose of describing their currents or navigable char-

acters, always bore the latter signification, observing that this was their primary meaning, and was of opinion that they were used in that sense in the act of Congress admitting the State into the Union and in the constitution of Iowa. In support of this view the court referred to the changing character of the currents of the river followed by vessels, caused by the shifting nature of the sand bars found in the river.

"The course of navigation," it said, "which follows what boatmen call the channel, is extremely sinuous and often chang-
232 ing, and is unknown except to experienced navigators. On the other hand, the bed of the main river, designated by the word channel, used in its primary sense, is the great body of water flowing down the stream. It is broad and well defined by islands or the main shore. It cannot be possible that Congress and the people of the State, in describing its boundary, used the word channel to describe the sinuous, obscure, and changing line of navigation rather than the broad and distinctly defined bed of the main river. The center of this river-bed channel may be readily determined, while the center of the navigable channel often could not be known with certainty. The first is a fit boundary line of a State; the second cannot be."

In Buttenuth *v.* St. Louis Bridge Co. (123 Ill., 535) the supreme court of Illinois reached a different conclusion after an elaborate consideration of the same question. That was a case where an alleged overestimate was made of a bridge crossing the Mississippi river at St. Louis, and the question discussed was, how far did the jurisdiction of Illinois extend over the river? After observing that when a river is a boundary between States, as is the Mississippi between Illinois and Missouri, it is the main—the permanent—river which constitutes the boundary and not that part which flows in seasons of high water and is dry at others, the court proceeds, treating the Mississippi river as a common boundary between the States of Illinois and Missouri, to inquire the meaning of the term "middle of the Mississippi river," used in the enabling act of Congress and in the Constitution, defining the boundaries of the State of Illinois. It answers the inquiry by observing that the word "channel" is used as indicating "the space within which ships can and usually do pass," and says, "It is apprehended it is in this sense the expressions 'middle of the river,' 'middle of the main channel,' 'mid-channel,' 'middle thread of the channel' are used in enabling acts of Congress and
233 in State constitutions establishing State boundaries. It is the free navigation of the river, when such river constitutes a common boundary, that part on which boats can and do pass, sometimes called 'nautre' pathway, that States demand shall be secured to them. When a river, navigable in fact, is taken or agreed upon as the boundary between two nations or States the utility of the main channel, or, what is the same thing, the navigable part of the river, is too great to admit a supposition that either State intended to surrender to the State or nation occupying the opposite shore the whole of the principal channel or highway for vessels,

and thus debar its own vessels the right of passing to and fro for purposes of defense or commerce. That would be to surrender all, or, at least, the most valuable part, of such river boundary for the purposes of commerce or other purposes deemed of great value to independent States or nations."

The opinions in both of these cases are able, and present in the strongest terms the different views as to the line of jurisdiction between neighboring States, separated by a navigable stream; but we are of opinion that the controlling consideration in this matter is that which preserves to each State equality in the right of navigation in the river. We therefore hold, in accordance with this view, that the true line in navigable rivers between the States of the Union, which separates the jurisdiction of one from the other, is the middle of the main channel of the river. Thus the jurisdiction of each State extends to the thread of the streams—that is, to the "mid-channel"—and, if there be several channels, to the middle of the principal one, or, rather, the one usually followed.

It is therefore ordered, adjudged, and declared that the boundary line between the State of Iowa and the State of Illinois is the
234 middle of the main navigable channel of the Mississippi river; and as the counsel of the two States both desire that this boundary line be established at the places where the several bridges mentioned in the pleadings, nine in number, cross the Mississippi river, it is further ordered that a commission be appointed to ascertain and d signate at said places the boundary line between the two States, such commission, consisting of three competent persons, to be named by the court upon suggestion of counsel and be required to make proper examination and to delineate on maps prepared for that purpose the true line as determined by this court and report the same to the court for its further action.

True copy.

Test:

____ ____,
Clerk Supreme Court U. S.

Supreme Court of the United States, October Term, 1892.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS.
} No. 5, Original. In Equity. On Bill and Cross-bill.

This cause came on to be heard on the pleadings, and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and declared by this court that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi river at the places where the nine bridges mentioned in the pleadings cross said river.

And it is further ordered that a commission be appointed to ascertain and designate at said places the boundary line be-
235 tween the two States, such commission, consisting of three competent persons, to be named by the court upon the suggestion of counsel, and be required to make a proper examination

and to delineate on maps prepared for that purpose the true line as determined by this court and report the same to the court for its further action.

January 3, 1893.

And afterwards, to wit, on the 6th day of March, A. D. 1893, a joint request for the appointment of commissioners to fix boundary was filed in the words and figures following, viz:

To the honorable Supreme Court of the U. S.:

Your decision of the 3d inst., The State of Ia. *vs.* The State of Ills., calls for the appointment of commissioners at the suggestion of counsel "to make the proper examination, &c., the true line, &c., &c."

As no appropriation is now available for that purpose and as there is an emergency requiring that the line between Keokuk, Ia., and Hamilton, Ill., be fixed at the earliest date, we join in asking the appointment as such commissioners of Montgomery Meigs, U. S. civil engineer; John R. Carpenter and Albert Wempner, a licensed pilot of over 40 years.

We further request that in the appointment of this commission they be directed to proceed at once to fix the boundary line on the Keokuk and Hamilton bridge and await the making of any further examination until an appropriation be made for this purpose.

Resp. submitted.

Des Moines, Ia., Jan. 19, 1893.

JNO. Y. STONE,
Att'y Gen'l for State of Iowa.

Springfield, Ills., Jan. 19, 1893.

M. T. MOLONEY,
Att'y Gen'l for State of Ill.

236 E. S. SMITH,
Of Counsel for the State of Illinois.

(Endorsed:) Supreme Court U. S., October term, 1892. No. 5, original. The State of Iowa, complainant, *vs.* The State of Illinois. Joint request for the appointment of commissioners to fix boundary. Received Feb. 23, 1893. Filed March 6, 1893.

And on the same day, to wit, on the 6th day of March, A. D. 1893, the following entry appears of record, viz:

Supreme Court of the United States, October Term, 1892.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

Mr. John J. Seerley, in behalf of counsel, submitted to the consideration of the court a motion for the appointment of commissioners to fix the boundary line as per stipulation of counsel.

March 6, 1893.

And afterwards, to wit, on the 7th day of March, A. D. 1893, the following entry appears of record, viz:

Supreme Court of the United States, October Term, 1892.

237 THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

And now comes the parties, by their respective attorneys, and file in court their stipulation agreeing upon Montgomery Meigs (a U.S. civil engineer), John R. Carpenter, and Albert Wempner (a pilot) as commissioners, and recommend their appointment in this case; and as there is litigation pending relating to the taxation of the Keokuk and Hamilton bridge and immediate action thereon is desired, it is ordered that said Montgomery Meigs, John R. Carpenter, and Albert Wempner be, and they are hereby, appointed commissioners to locate and mark the State line between the States of Iowa and Illinois, pursuant to the opinion of this court in this cause, at each of the nine bridges across the Mississippi river between these States; and inasmuch as there is an emergency existing therefor, it is ordered that said commissioners proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge and report at once their action in that regard before proceeding to ascertain the line or mark the same at the other bridges, and that after they determine and mark the said State line at the other eight bridges when requested by either party and report the same; that before entering upon their duties they take and forward to the clerk of this court, to be filed, an oath that they will faithfully perform their duties as such commissioners under the decision rendered in this cause to the best of their ability; that the clerk of this court furnish to said commissioners a copy of this order and the opinion of the court in this cause.

March 7, 1893.

238 And afterwards, to wit, on the 25th day of March, A. D. 1893, the oaths of Montgomery Meigs, John R. Carpenter, and Albert Wempner, as commissioners to locate and mark the State line, were filed in the words and figures following, viz:

UNITED STATES OF AMERICA, } *ss:*
Southern District of Iowa, }

I, Montgomery Meigs, having been appointed one of the commissioners to locate and mark the State line between the States of Iowa and Illinois, do solemnly swear that I will faithfully perform the duties of the office upon which I am about to enter to the best of my ability, and that I will support the Constitution of the United States, so help me God.

MONTGOMERY MEIGS.

Subscribed in my presence and sworn to before me by the said Montgomery Meigs this 21st day of March, A. D. 1893.

Witness my hand and seal of the district court of the
[SEAL.] United States, southern district of Iowa, hereto affixed at Keokuk, this 21st day of March, A. D. 1893.

J. J. STEADMAN, *Clerk*,
By C. A. LEECH, *Deputy*.

(Endorsed:) Supreme Court U. S., October term, 1892. No. 5, original. The State of Iowa, complainant, *vs.* The State of Illinois. Oath of Montgomery Meigs as commissioner to locate and mark the State line. Filed Mar. 25, 1893. James H. McKenney, clerk.

238½ UNITED STATES OF AMERICA, } *ss*:
Southern District of Iowa, }

I, John R. Carpenter, having been appointed on- of the commissioners to locate and mark the State line between the States of Iowa and Illinois, do solemnly swear that I will faithfully perform the duties of the office upon which I am about to enter to the best of my ability, and that I will support the Constitution of the United States, so help me God.

JOHN R. CARPENTER.

Subscribed in my presence and sworn to before me by the said John R. Carpenter this 21st day of March, A. D. 1893.

Witness my hand and seal of the district court of the United States, southern district of Iowa, hereto affixed st Keokuk, this 21st day of March, A. D. 1893.

J. J. STEADMAN, *Clerk*,
[SEAL.] By C. A. LEECH, *Deputy*.

(Endorsed:) Supreme Court U. S., October term, 1892. No. 5, original. The State of Iowa, complainant, *vs.* The State of Illinois. Oath of John R. Carpenter as commissioner to locate and mark the State line. Filed Mar. 25, 1893. James H. McKenney, clerk.

239 UNITED STATES OF AMERICA, } *ss*:
Southern District of Iowa, }

I, Albert Wempner, having been appointed one of the commissioners to locate and mark the State line between the States of Iowa and Illinois, do solemnly swear that I will faithfully perform the duties of the office upon which I am about to enter to the best of my ability, and that I will support the Constitution of the United States, so help me God.

ALBERT WEMPNER.

Subscribed in my presence and sworn to before me by the said Albert Wempner this 15th day of March, A. D. 1893.

Witness my hand and seal of the district court of the
[SEAL.] United States, southern district of Iowa, hereto affixed at Keokuk, this 15th day of March, A. D. 1893.

J. J. STEADMAN, *Clerk U. S. D. C.*,
By C. A. LEECH, *Deputy*.

(Endorsed:) Supreme Court U. S., October term, 1892. No. 5, original. The State of Iowa, complainant, *vs.* The State of Illinois. Oath of Albert Wempner as commissioner to locate and mark the State line. Filed Mar. 25, 1893. James H. McKenney, clerk.

240 And afterwards, to wit, on the 30th day of March, A. D. 1893, the following entry appears of record, viz:

The Supreme Court of the United States, October Term, 1893.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

On motion of Mr. Walter I. Hayes, in behalf of counsel, leave is hereby granted to file the report of the commissioners appointed herein to fix and mark the boundary line, and a motion to confirm said report was submitted to the consideration of the court by Mr. Hayes in behalf of counsel.
March 30, 1893.

And on the same day, to wit, on the 30th day of March, A. D. 1893, a motion to confirm commissioners' report was filed in the following words and figures, viz:

In the Supreme Court of the United States, October Term, A. D. 1892.

THE STATE OF IOWA
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

Motion.

241 Now comes the said plaintiff, The State of Iowa, and moves the court for an order confirming the report of the commissioners appointed by this court to determine and mark the boundary line between said States at the nine bridges across the Mississippi river between said States so far as it relates to the boundary at the Keokuk and Hamilton bridge at Keokuk, Iowa, upon which report has been made. Said motion is founded upon said report and the record in this case.

(Signed) WALTER I. HAYES,
Attorneys for Plaintiff.

Endorsed: Supreme Court U. S., October term, 1892. No. 5, original. The State of Iowa, complainant, *vs.* The State of Illinois. Motion for confirmation of commissioners' report as to boundary line at Keokuk and Hamilton bridge. Filed March 30, 1893.

And on the same day, to wit, on the 30th day of March, A. D. 1893, a report of commissioners was filed in the words and figures following, viz:

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

KEOKUK, IOWA, *March* 23, 1893.

To the honorable the Supreme Court of the United States.

GENTLEMEN: Your commissioners appointed under a decision of your honorable body in the case of The State of Iowa *vs.* The State of Illinois, rendered January 3, 1893, to determine and mark the boundary line between the States of Iowa and Illinois at the nine bridges across the Mississippi river between these States have the honor to respectfully submit the following report, viz:

242 After qualifying under oath, as by law provided, and after most careful consideration of the decision of your honorable body in the case above mentioned your commissioners proceeded, as directed by you, to survey and fix the boundary line between Iowa and Illinois on the Keokuk and Hamilton bridge at Keokuk, Iowa.

Your commissioners find that the said boundary line is situated (1,041.65) ten hundred and forty-one and sixty-five one-hundredths feet easterly of the center of the draw-span, measured along the axis of the bridge and crossing the structure in a direction parallel to the piers of the bridge.

Your commissioners also respectfully submit the accompanying plat showing their measurements along the bridge and to neighboring monuments as a matter of further record.

(Signed) MONTGOMERY MEIGS,
JOHN R. CARPENTER,
ALBERT WEMPNER,
Commissioners.

The following is the plat filed by the commissioners.

(Here follows map marked p. 243.)

244 Endorsed: Supreme Court U. S., October term, 1892. No. 5, original. The State of Iowa, complainant, *vs.* The State of Illinois. Report of commissioners as to boundary line at Keokuk and Hamilton bridge and plat accompanying same. Filed March 30, 1893.

And afterwards, to wit, on the 10th day of April, A. D. 1893, the following entry appears of record, viz:

Supreme Court of the United States, October Term, 1892.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

This cause coming on to be heard upon the application of the State of Iowa for an order confirming the report of the commissioners presented herein, ascertaining and making the boundary line between the State of Illinois and the State of Iowa at the Keokuk and Hamilton bridge at Keokuk, Iowa, it is ordered that said report be, and the same is hereby, confirmed; and it is further

ordered that said commissioners proceed to determine and mark the boundary line between said States throughout its extent and report thereon to this court with all convenient speed, and that the order herein entered on March 7th, 1893, be, and it is hereby, modified in accordance herewith.

April 10, 1893.

245 THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS.

Docket Entries.

1891, Nov. 17. Motion for leave to file bill, answer, cross-bill, answer to cross-bill, and replication, and to assign case for argument filed.
1891, Nov. 17. Leave granted to file bill, answer, cross-bill, answer to cross-bill, and replication.
1891, Nov. 17. Bill of complaint filed.
1891, Nov. 17. Answer to bill of complaint filed.
1891, Nov. 17. Cross-bill of Illinois filed.
1891, Nov. 17. Answer of Iowa to cross-bill of Illinois filed.
1891, Nov. 17. Replication of Iowa filed.
1892, M'ch 7. Assigned for argument Oct. 17, 1892, after No. 1364.
1892, Oct. 14. Motion by counsel for defendant to reassign case for Nov. 28 and consent of counsel for complainant filed.

246

1892, Oct. 17. Reassigned for argument Nov. 28 after No. 1197.
1892, Nov. 28. Submitted.
1893, Jan. 3. Ordered that commission be appointed to ascertain and designate boundary.
1893, M'ch 6. Joint request for the appointment of commissioners to fix boundary filed.
1893, M'ch 6. Motion for an order approving selection of commissioners filed and submitted.
1893, M'ch 7. Ordered that selection of commissioners be confirmed.
1893, M'ch 25. Oath of Montgomery Meigs, as commissioner to locate and mark the State line, filed.
1893, M'ch 25. Oath of John R. Carpenter filed.
1893, M'ch 25. Oath of Albert Wempner filed.
1893, M'ch 30. Leave granted to file report and plat.
1893, M'ch 30. Motion for confirmation of commissioners' report as to boundary line at Keokuk & Hamilton bridge submitted.
1893, M'ch 30. Report of commissioners as to boundary line at Keokuk & Hamilton bridge and accompanying plat filed.
1893, Ap'l 10. Preliminary report approved.

247 Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing printed & written pages numbered from one to forty-one, inclusive, contain a full, true, and complete transcript of record and all proceedings in the case of The State of Iowa, complainant, *vs.* The State of Illinois, No. 5, or'g'l, October term, 1892, as the same remain upon the files and records of said Supreme Court to date.

In testimony whereof I hereunto subscribe my name and [SEAL.] affix the seal of said Supreme Court, at the city of Washington, this 20th day of April, A. D. 1893.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

248 In connection with the last, offers and read a certified copy of the order of the Supreme Court of the U. S. setting aside the order in the original case filed April 10, 1893, marked Exhibit "F," as follows:

Supreme Court of the United States, October Term, 1893.

THE STATE OF IOWA
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

JANUARY 15, 1894.

Mr. Chief Justice FULLER delivered the opinion of the court:

This was an original suit in equity instituted in this court to determine the boundary line between the States of Iowa and Illinois, and considered upon submission on the pleadings and the briefs of counsel.

On the third of January, 1893, the question at issue was decided (Iowa *v.* Illinois, 147 U. S., 1) and interlocutory decree entered, whereby it was "ordered, adjudged, and declared by this court that the boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi river at the places where the nine bridges mentioned in the plead-
249 ings cross said river, and it is further ordered that a commission be appointed to ascertain and designate at said places the boundary line between the two States, said commission consisting of three competent persons to be named by the court upon the suggestion of counsel and be required to make a proper examination and to delineate on maps prepared for that purpose the true line as determined by this court and report the same to the court for its further action."

March 6, 1893, a joint request was filed in this court, dated January 19, 1893, signed by the attorneys general of the two States concerned, requesting the appointment of certain persons therein suggested as commissioners to fix the boundary line, and that the line be located at once at the Keokuk and Hamilton bridge, and on

the next day an order was entered in accordance with this request, as follows: "It is ordered that said Montgomery Meigs, John R. Carpenter, and Albert Wempner be, and they are hereby, appointed commissioners to locate and mark the State line between the States of Iowa and Illinois, pursuant to the opinion of this court in this cause, at each of the nine bridges across the Mississippi river between these States; and, inasmuch as there is an emergency existing therefor, it is ordered that said commissioners proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge, and report at once their action in that regard before proceeding to ascertain the line or mark the same at the other bridges, and that afterward they determine and mark the said State line at the other eight bridges when requested by either party and report the same; that before entering upon their duties they take and forward to the clerk of this court, to be filed, an oath that they will faithfully perform their duties as such commissioners under the decision rendered in this cause to the best of their ability; that the clerk of this court furnish to said com-
250 missioners a copy of this order and the opinion of the court in this cause."

The commissioners filed their report March 30, 1893, as to the boundary line at the bridge mentioned, and on the same day the State of Iowa moved for an order confirming the report, counsel making the application being advised that it was consented to on behalf of the State of Illinois. On April 10, 1893, an order was entered in these words: "This cause coming on to be heard upon the application of the State of Iowa for an order confirming the report of the commissioners, presented herein, ascertaining and marking the boundary line between the State of Illinois and the State of Iowa at the Keokuk and Hamilton bridge, at Keokuk, Iowa, it is ordered that the said report be, and the same is hereby, confirmed; and it is further ordered that said commissioners proceed to determine and mark the boundary line between said States throughout its extent and report thereon to this court with all convenient speed, and that the order herein entered on March 7, 1893, be, and it is hereby, modified in accordance herewith."

As will be seen, these proceedings were had at October term, 1892. The State of Illinois on October 11, 1893, one of the first days of October term, 1893, by leave of court, moved to set aside the order confirming the report of the commissioners, filed as before stated, upon the ground that notice was not given of the application for the confirmation of said report, and that the consent of the State was signified to the court through mistake and inadvertence. This motion was resisted by the State of Iowa, and numerous affidavits have been filed on both sides.

We are satisfied, upon a careful examination of the papers, that counsel were laboring under misapprehension in the matter of the application for the confirmation, and that the order of the tenth of April was improvidently entered, in that the State of Illinois had not received due notice of the application and had not con-
251 sented to the order. It is unnecessary to rehearse the facts and circumstances which lead to the misapprehension. It is

objected by the State of Iowa that the order of April 10 was a final finding and decree, and that it cannot be changed or set aside upon motion at a term of court subsequent to that at which it was entered, but we regard the order as interlocutory merely. The confirmation of the report was but a step in the cause, and not a final decree deciding and disposing of the whole merits of the cause and discharging the parties from further attendance. We cannot dispose of the case by piecemeal, and until the boundary line throughout its extent is determined all orders in the case will be interlocutory.

In the exercise of original jurisdiction in the determination of the boundary line between sovereign States this court proceeds only upon the utmost circumspection and deliberation, and no order can stand in respect of which full opportunity to be heard has not been afforded. Without intimating any opinion on the controversy raised as to the action of the commissioners, the order of April 10, 1893, so far as it confirms the report in question, will be vacated.

Ordered accordingly.

252 Supreme Court of the United States, October Term, 1893.

THE STATE OF IOWA, Complainant,
vs.
THE STATE OF ILLINOIS. } No. 5, Original.

On consideration of the motion to vacate the order entered herein on the tenth day of April, 1893, confirming the report of the commissioners appointed to mark and fix the boundary line between the State of Iowa and the State of Illinois, filed herein March 30, 1893, and of the argument of counsel thereupon had, as well in support of as against the same, it is now here ordered by the court that said motion be, and the same is hereby, granted and said order vacated and set aside so far as it confirmed the report aforesaid.

January 15, 1894.

The Supreme Court of the United States.

I, James H. McKenney, clerk of the Supreme Court of the United States, do hereby certify that the foregoing are true copies of the opinion and order of said Supreme Court delivered and entered on January 15, 1894, in the case of The State of Iowa, complainant, *vs.* The State of Illinois, No. 5, orig'l, October term, 1893, as the same remain upon the files and records of said Supreme Court.

253 In testimony whereof I hereunto subscribe my name and affix the seal of said Supreme Court, at the city of Washington, this 31st day of May, A. D. 1895.

JAMES H. McKENNEY, [SEAL.]
Clerk of the Supreme Court of the United States.

254 Objection. Overruled. All is admitted.

It is admitted that the defendant bridge Co. is a consolidated corporation formed by consolidation of an Iowa with an Illi-

nois corporation to construct a bridge across the Mississippi river between Hamilton, Illinois, and Keokuk, Iowa, with main office at Keokuk.

This is done to save extensive proofs.

Defendant rests.

Rebut-al.

M. LEROY, sworn, testified:

BERRY: What is the distance from the east abutment of that bridge, on the Illinois side, to the first pier east of the pivot pier?

A. 1,800 feet.

2. How far is it from the east abutment, on the Illinois side, to the second pier east of the pivot pier?

Ans. About 1,565 ft.

Cross-examination:

(None.)

Plaintiff offers in evidence the deposition of JAMES W. CAMPBELL, of Fort Madison, Iowa, as follows:

It is agreed by the parties to this suit that all objections to
255 both questions and answers in the taking of this deposition *is* reserved to the hearing of the cause.

Q. What is your name, age, and occupation?

A. James W. Campbell; age, 70; occupation, a lumber dealer.

Q. Where do you reside?

A. Fort Madison, Iowa.

Q. Were you ever engaged in any other business; if so, what?

A. As pilot and steamboat captain.

Q. How long was you a steamboat pilot and on what river?

A. Steamboat pilot on the upper Mississippi river twenty-seven years.

Q. From what point to what point did you generally make your trips.

A. St. Louis to St. Paul.

Q. Do you know where the city of Keokuk, Iowa, is located?

A. I do.

Q. If on any river, state what river.

A. On the Mississippi river, west bank.

Q. What town, if any, is on the Illinois side opposite Keokuk, Iowa?

A. Hamilton.

Q. During the time you were a steamboat pilot how frequently did you pass up and down the river between Keokuk and Hamilton?

A. Well, there was not an interval of over four months during the summer season during the last twenty-seven years.

Q. As such pilot was you acquainted with the channel of said Mississippi river?

A. I was.

Q. State where the channel of said river was in relation to the Iowa shore.

A. Immediately down the Iowa shore.

256 Q. Opposite Keokuk, Iowa, about how far was the channel of the river from the Iowa shore?

A. The channel began at what I would term at low-water mark, extending out into the river about six hundred feet.

Q. Do you know the Keokuk & Hamilton bridge?

A. I do.

Q. Will you state where the channel of the river is, as compared to the pivot pier in the draw of said bridge?

A. It extends just a short distance beyond the pivot pier, toward the Illinois shore; would extend from the Iowa shore to the second pier beyond the pivot pier.

Q. Did the channel of the river continue substantially at the same place during all of the time that you were pilot on said river?

A. It did.

Q. Is the channel of the river the same now, in your judgment, or substantially so?

A. It is the same.

Q. I will ask you to look at a plat or survey made of the river between the east abutment, on the Illinois side, to the west abutment of said bridge, on the Iowa side, and state whether or not said survey and soundings are, in your judgment, correct, said survey and soundings being made by Thos. B. McGrath, civil engineer, September 13, 1893.

A. I would infer that that is about as it is. That is my view of it.

Q. When you say, in answer to interrogatory "11, the channel began at what I would term low water-mark, extending out into the river about six hundred feet," on which bank of the river do you mean to be understood as?

257 A. Iowa shore, west bank.

Cross-examination by J. H. COLE:

Q. Capt. Campbell, what channel is that that you have been describing?

A. The channel of the Mississippi river.

Q. What particular channel of the Mississippi river?

A. The only channel of the Mississippi river.

Q. The only channel for what purposes, Captain?

A. Steamboats, barges, rafts, and everything else that floats.

Q. Then this channel which you have been describing is the steamboat channel of the Mississippi river, in your judgment?

A. It is a continuous body of the deepest water, not interrupted by rocks and sand bars.

Q. Is this the steamboat channel of the Mississippi river?

A. I said it was, before.

Q. Now define what you mean by steamboat channel, Captain.

A. It is a continuous body of water of a sufficient depth at all times by which a boat can ascend or descend the current of the river without the obstruction of sand bars and rocks.

Q. Was this channel over the Des Moines rapids you have described as running in front of Keokuk navigable at all stages of the water?

A. Yes, sir; when not obstructed by ice.

Q. What boat was you pilot of in 1864?

A. Steamboat "Envoy;" pilot and captain.

Q. What was her draft of water when loaded, Captain?

A. About five feet, I think.

Q. Did you make regular trips during the season of 1864 between Keokuk and Montrose with that boat?

258 A. Not all the time. Part of the time I transferred my freight at either the head or foot of the rapids.

Q. Why did you transfer your freight?

A. Because there wasn't sufficient water in the channel some six or eight hundred yards above the abutment on the west bank of the present bridge on the Mississippi river, thence the channel of the rapids began when there was but twenty-seven inches in it.

Q. Then there was times when, owing to the low stage of water, this channel was not navigable?

A. No, sir; I did not say so.

Q. You stated you transferred cargo because there was not water enough to cross the rapids with your steamer, the "Envoy"?

A. There was not water enough to cross the rapids with the steamer "Envoy," because the channel on the rapids began above where the west abutment now stands about eight hundred yards, probably more.

Q. Are you acquainted with the geography of the country lying opposite Keokuk in front of the city of Hamilton, Ill.?

A. I have been.

Q. Give a brief description of it.

A. Low, flat delta, originally covered with trees, and sloughs running through it. The bottom I presume to be possibly a half a mile in width.

Q. What was the name of the slough running through this delta that you have described?

A. Hyde slough.

Q. Did you ever enter Hyde slough at any stage of the water?

A. No, sir.

Q. Did you ever see a steamboat in Hyde slough?

A. I never saw any in there.

259 Q. Tell us where Hyde slough is.

A. It's a slough that runs possibly a third of the way between the river and the bluff, and that there was a mill located upon this slough.

Q. Was there any slough to the eastward of this between that and the main shore?

A. I don't remember.

Q. Can you tell us where the old Hamilton warehouse was located?

A. I cannot; I don't remember.

Q. Can you tell us where the depot of the Wabash railroad was located?

A. My recollection is, back against the bluff.

Q. Did you ever land at the Wabash freight-house on the Illinois side to take off or put on freight?

A. I have no recollection of ever landing at any such place.

Q. Do you remember the steam ferry-boat that was operated between Keokuk and Hamilton, Ill.?

A. I do not remember the name of the ferry-boat that he represents to have run between Hamilton and Keokuk.

Q. Do you remember the ferry-boat operated by Sample or Van Dyke or Bartlett?

A. I do not.

Q. Will you locate what is called Old Dominion rock, at or near Keokuk?

A. It was a rock located in the river in the edge of the channel, near where the present bridge crosses it, from 350 to 400 feet from the west bank of the river.

Q. Which edge of the channel?

A. Near to the east edge.

Q. In going up the river you passed on the inside or outside of Old Dominion rock?

260 A. Passed on the inside, next to the Iowa shore.

Q. Why did you go up on the inside or near the Iowa shore?

A. The main channel was between the rock and the Iowa shore in later years.

Q. Are you fomiliar with the location of the Des Moines Rapids canal?

A. Yes, sir.

Q. How far does that commence above the Keokuk and Hamilton bridge?

A. The canal commenced about 300 or 400 feet.

Q. How wide is the canal at the lower end extending out from the Iowa shore?

A. I don't really know; I would infer about 100 feet.

Q. Do you know the sluiceway running back of the lower rock?

A. I think I do.

Q. About how far is that from the Iowa shore?

A. Just about where it used to be.

Q. How wide is that sluiceway, in your judgment?

A. I can't say. It may be fifteen feet.

Q. How far is it from that sluiceway to the lock proper in an easterly direction?

A. I don't know.

Q. You have been on these grounds?

A. I have been upon the lock and the surroundings there.

Q. Is it two hundred feet between the sluice and the lock walls?

A. I don't think it is.
Q. 175 feet?
A. No.
Q. 150 feet?
A. I should infer it was in the neighborhood of a 115 or 120 feet.
Q. How wide is the lower lock, in your judgment, between the walls?
A. I can't say that, even. I think two boats can pass.
261 Q. How wide would that be?
A. In my judgment, between 75 and 80 feet.
Q. How far, then, Captain, from the east wall of the lock across the embankment to the river proper?
A. I will state this: that the lock was constructed in the river, beginning at the edge of the shore or near it.
Q. I would like an answer to my question. How far, in your judgment, is it from the east wall of the lock to the embankment *to* the Mississippi river proper in an easterly direction as it now is?
A. I would infer that the lock now embraces a portion of the Mississippi river, beginning at the edge of the water on the west side, extending eastward out into the river possibly 120 feet.
Q. How far is it from the face of the east wall of the lower lock, through the easterly wall of the lower lock and the embankment and slope wall to the Mississippi river?
A. I can't answer it any more than what I have.
Q. Captain Campbell, in your judgment, how thick is the east wall to the lower lock of the Des Moines Rapid- canal?
A. I have no idea at all. Above the lock probably fifteen or twenty feet.
Q. In your judgment, how thick would you think it was?
A. Probably six feet.
Q. How much of an earth embankment outside of that wall?
A. Probably ten feet.
Q. Have you ever operated steamboats over the canal rapids since the building of the canal?
A. I have.
Q. Did you go up or down the river outside the canal?
A. Yes, sir.
262 Q. How far outside the canal did you run the boat?
A. From 75 to a hundred feet, I should judge.
Q. What stage of water was necessary to navigate the Des Moines rapids with a steamer like the "Envoy"?
A. I could cross with the "Envoy" when there was three feet on the rapids.
Q. What about other pilots with steamers more heavily laden?
A. Other pilots were timid and afraid to try it.
Q. Then, by the majority of pilots, the rapids were not considered navigable at the stage of water you ventured on?
A. That depended entirely upon the draft of the boat.
Q. What would Ransom Holiday and other old pilots have done with a boat drawing three feet six inches of water when there was but three feet upon the rapids?

A. They wouldn't have attempted to cross it.

Q. What was the last year you were engaged as a master upon the water, Captain?

A. October, 1871.

Q. What improvements have been made by the Government, in your knowledge, to improve the navigation of the Des Moines rapids?

A. In 1838 a channel was cut through in what was called Spring chain, going to the right as you ascended of Filley Rock chute. The said channel was 42 feet wide and lying at an angle of 30° in relation to the old channel. The next improvement was made at Montebello; the next after this was made at the head of what is called Lime Kiln chain, the next being made was by blasting out a number of large rocks near what was called Mechanic's rock. Again, in 1857, other improvements were made at Montrose chain, and also in Lime Kiln chain; the Dillon brakes were blown out
below Lime Kiln chain, and again at Montebello and Filley
263 Rock chute, and I think Agnes chute was blown out about
the same time, and during the latter improvements the stone taken from the bed of the river out of the channel was formed into islands above high water. There was — canal constructed about in 1864 or 1865, extending from Nashville to the city of Keokuk.

Q. What improvement after the construction of this canal did the Government make from the lower lock toward the bridge below?

A. The Government contracted with Adam Hine to make an excavation from the mouth of the lock to where the bridge began to cross the river towards Hamilton.

Q. Capt. Campbell, you testified that you ceased to be a pilot in 1871, and your attention has been directed to a map made in September, 1893, by one Thomas B. McMath. I ask your attention again to that map, and at the station marked 1400 upon that map there is an obstruction in the river. Is that natural or an artificial obstruction?

A. I don't know; I know this river is filled with rocks all along there.

Q. Was that obstruction in the river when you ceased to be a pilot in October, 1871?

A. I state again that this whole body of the river was obstructed by patches of rock, and artificial obstructions may have been added to the same during the construction of the bridge.

Q. Do you know, as a matter of fact, what the depth of the water was at station 1400 in 1864—at low water mark?

A. This body of water was interspersed with deep holes; one place the water would be six feet deep and another eighteen inches.

Q. What part of the river are you describing?

A. All that part of river east of the second pier from the pivot
pier and south of the line of the bridge from three to five
264 hundred yards, and north of the bridge up to a line of a reef
of rocks running from the Illinois to the Iowa shore, with the exception of Agatha chute.

Q. Then does this profile correctly show the bottom of the river at that time, Captain?

A. I couldn't state the exact profile.

Q. Do you mean to say, then, that this profile presented to you shows the correct profile of the bed of the river under the Keokuk & Hamilton bridge as described by you?

A. I did not state that the profile was a correct one; I meant the bridge.

Q. Is the profile of the map as prepared by McMath a correct one of the bed of the Mississippi river?

A. I don't know.

Q. At the first span at station 2100 upon said map is marked in red figures $5\frac{5}{10}$. Does that represent the correct stage of water at a stage $1\frac{6}{10}$ feet above low water in 1864?

A. I know this much, that Mr. Hines excavated from the mouth of the canal to the abutment of the bridge.

Q. What does this profile before you in that represent?

A. It represents the bridge across the Mississippi river from Keokuk to Hamilton.

Q. What does this whole irregular line at the bottom of the map represent?

A. I don't know.

Q. What does this straight line represent?

A. Judging from the words upon the map, the bridge.

Q. Do you know whether it is a correct representation or not?

A. I do not.

265 Q. Upon this map at station 950 is an obstruction in the river. Is that a natural or artificial obstruction?

A. I don't know.

Q. Was you ever over this easterly part of the river with a steamboat?

A. I was not.

Q. Did you ever make soundings over this easterly part of the river?

A. I began at the age of seven in the cat-fish and drift-log business at Keokuk. I did nothing else but paddle about in a canoe from that time until I was thirteen years of age. I have sounded on a hundred patches of rocks at different times in that part of the river. Sometimes my trout lines would become fouled upon these patches of rocks and I had to disconnect them; I have gone from the lower painted rocks from a quarter to a half a mile below this bridge up to the shore to the upper painted rocks, seven or eight hundred yards above the bridge, many thousand times, picking up knives and forks, old broken plates and pieces of grate bars, and occasionally finding a piece of lead; and there was no spot of the river for a half a mile above and a half a mile below this bridge that I was not perfectly familiar with from the age of seven to thirteen.

Q. You think you recollect these patches of rock you located as a boy?

A. Yes; I do.

Q. Was this patch, under station 1400 upon this map, one of the patches you located or not?

A. I told you before and ask you now do you want to know the relation of one patch with another?

266 Q. If at the time you located as a boy there was any patch of rock corresponded with the elevation upon this map as shown in the profile in station 1400?

A. I know nothing about any particular patch of being located or designated by station 1400 in relation with the bridge, but the patches were universally extended over the river.

Q. What was the shape of those patches, Captain?

A. Apparently an upheaval of the lime-kiln formation, ledges of rock alongside of which the water would be deep, and in a short distance you would come to others of the same kind.

Q. What direction did they extend under the Keokuk and Hamilton bridge?

A. They extended down from Cheney creek across toward the Iowa shore within probably 600 feet, thence down to the shore till you get to a point what we called Lower Painted rocks, upon the other side. Thence they extended out into the middle of the river within a half a mile, possibly, of the Illinois shore. Then came the sand bars.

Q. How much rock did Adam Hind excavate in the west opening of the bridge in improving the channel to the lower lock?

A. I don't know how many perch he took out.

Q. How many feet in depth?

A. I can't state positively.

Q. Do you say, Captain, that you never saw any steam ferries crossing the river from Keokuk to Hamilton?

A. Yes; I think I have seen ferries crossing there.

Q. Where was their landing in Keokuk?

A. I don't know exactly where it was.

Q. About where did they land in Keokuk?

A. They landed not far from where the bridge terminates.

Q. Where did they land in Illinois?

A. There was a dike out in the river. They landed at that dike.

267 Q. What course did they take from the landing in Keokuk to the dike in Illinois?

A. I think they would land a little above where the bridge terminates.

Q. They found a channel in crossing on the line that you have described?

A. No steamboat channel there.

Q. If a steamboat went across on that line, what would they call it?

A. No channel there.

Q. If these ferry-boats that you saw navigating the river between Keokuk, Iowa, and Hamilton, Illinois, were operated by steam and passed continuously from one landing to another at all stages of the

water, would they not fulfill the conditions of the channel as you have defined a steamboat channel?

A. No, sir; it would not.

Q. Why not?

A. The question was asked me what was a channel; my answer was it was a confinement of the deeper body of water by which a boat could continuously ascend and descend the Mississippi river.

Q. Where is the deepest water of the Mississippi river confined now, Captain?

A. I should judge, from the center pier to the second pier east.

Q. What confines it?

A. The natural depth of the river.

Q. Starting from the bridge and running north over the rapids, where is the deepest water of the river confined?

A. In the canal.

Q. Is that natural or an artificial canal?

A. Artificial canal.

(Signed) J. W. CAMPBELL.

268 Next offers the first and last pages, or rather the pages marked "A," and the last fly-leaf of the assessor's book of Durham township for 1894, containing the oath before entering on the duties, and the last page, being the affivadit as to performance of the duties; the same is also offered as to each of the townships where the assessors have been sworn, being the townships of Durham, Carthage, Wilcox, Chili, Pontoosuc, Sonora, Prairie, Bear Creek, Harmony, Hancock, Rocky Run, Fountain Green, and Appanoose, as follows:

STATE OF ILLINOIS, } ss:
County of Hancock, }

I, W. H. Walters, having been appointed (or elected) to the office of assessor in and for the town of Durham, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) WM. H. WALTERS.

Subscribed and sworn to this 11th day of May, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Cl'k.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, Wm. H. Walters, assessor of the town of Durham, in said county, do solemnly swear that the foregoing is a true and
269 correct abstract of the several footings on each page of the assessment-roll of the personal property, lands, and lots of said township for *for* the year 1894.

(Signed) WM. H. WALTERS,
Assessor Town of Durham.

Subscribed and sworn to this 26th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, Wm. H. Walters, assessor of town — Durham, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Durham, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

(Signed) WM. H. WALTERS, *Assessor.*

Subscribed and sworn to this 26th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

270 *Oath and Affidavit of the Assessor of Carthage Township.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, James Corbin, having been elected to the office of assessor in and for the town of Carthage, in the county of Hancock *county* aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) JAMES CORBIN.

Subscribed and sworn to this 23d day of April, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, James Corbin, assessor of Carthage township, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Carthage, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said
271 book and tabular statement returned herewith are correct, as I verily believe.

(Signed) JAMES CORBIN, *Assessor.*

Subscribed and sworn to this 29th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

Oath and Affidavit of the Assessor of Wilcox Township.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, D. W. Logal, having been appointed (or elected) to the office of assessor in and for the town of Wilcox, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) D. W. LOGAL.

Subscribed and sworn to this eleventh day of May, A. D. 1894, before me—

(Signed) JAMES F. CRAWFORD,
Notary Public.

272 STATE OF ILLINOIS, } ss:
Hancock County, }

I, D. W. Logal, assessor of Wilcox township, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Wilcox, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

(Signed) D. W. LOGAL, *Assessor.*

Subscribed and sworn to this 30th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

Oath and Affidavit of the Assessor of Chili Township.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, David Kemp, having been elected to the office of assessor in and for the town of Chili, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that
273 I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) DAVID KEMP.

Subscribed and sworn to this first day of May, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Clerk.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, David Kemp, assessor of Chili township, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Chili, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

(Signed) DAVID KEMP, *Assessor.*

Subscribed and sworn to this 29th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

274 *Oath and Affidavit of the Assessor of Pontoosuc Township.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, Hiram H. Longshie, having been elected to the office of assessor in and for the town of Pontoosuc, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) HIRAM H. LONGSHIE.

Subscribed and sworn to this 30th day of April, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Clerk.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, H. H. Longshie, assessor of Pontoosuc, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Pontoosuc, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and
275 and tabular statement returned herewith are correct, as I verily believe.

(Signed) H. H. LONGSHIE, *Assessor.*

Subscribed and sworn to this 28th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

Oath and Affidavit of the Assessor of Sonora Township.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, Selwyn Wyles, having been elected to the office of assessor in and for the town of Sonora, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) SELWYN WYLES.

Subscribed and sworn to this first day of May, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Clerk.*

276 STATE OF ILLINOIS, } ss:
Hancock County, }

I, Selwyn Wyles, assessor of Sonora township, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Sonora, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

(Signed) SELWYN WYLES, *Assessor.*

Subscribed and sworn to this 27th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Clerk.*

Oath and Affidavit of the Assessor of Prairie Township.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, George White, having been appointed (or elected) to the office of assessor in and for the town of Prairie, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois,
277 and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) GEORGE WHITE.

Subscribed and sworn to this 1st day of May, 1894, before me—

(Signed) J. F. GARARD,
Town Clerk.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, George White, assessor of Prairie township, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Prairie, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

(Signed) GEORGE WHITE, *Assessor.*

Subscribed and sworn to this twenty-fifth day of June, A. D. 1894, before me—

(Signed) S. P. McGAW, *J. P.*

278 *Oath and Affidavit of the Assessor of Bear Creek Township.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, James W. Biggs, having been appointed (or elected) to the office of assessor in and for the town of Bear Creek, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) JAMES W. BIGGS.

Subscribed and sworn to this 30th day of April, A. D. 1894, before me—

(Signed) JOHN F. SCOTT.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, James W. Biggs, assessor of Bear Creek township, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Bear Creek, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

279 (Signed) J. W. BIGGS, *Assessor.*

Subscribed and sworn to this 27th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

Oath and Affidavit of the Assessor of Harmony Township.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, John E. Horney, having been elected to the office of assessor in and for the town of Harmony, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) JOHN E. HORNEY.

Subscribed and sworn to this 24th day of April, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

280 STATE OF ILLINOIS, } ss:
Hancock County, }

I, John E. Horney, assessor of Harmony township, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Harmony, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

(Signed) JOHN E. HORNEY, *Assessor.*

Subscribed and sworn to this 26th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Clerk.*

Oath and Affidavit of the Assessor of Hancock Township.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, Sylvester Smith, having been appointed (or elected) to the office of assessor in and for the town of Hancock, in the county aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I
281 will faithfully discharge the duties of my said office to the best of my ability.

(Signed) SYLVESTER SMITH.

Subscribed and sworn to this 23d day of April, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Clerk.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, Sylvester Smith, assessor of the town of Hancock, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Hancock, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

(Signed) SYLVESTER SMITH, *Assessor.*

Subscribed and sworn to this 26th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

282 *Oath and Affidavit of the Assessor of Rocky Run Township.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, Louis Hull, having been elected to the office of assessor in and for the town of Rocky Run, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) LOUIS HULL.

Subscribed and sworn to this 21st day of April, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, Louis Hull, assessor of Rocky Run, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Rocky Run, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief,
and that the footings of the several columns in said book and
283 tabular statement returned herewith are correct, as I verily believe.

(Signed) LOUIS HULL, *Assessor.*

Subscribed and sworn to this 26th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

Oath and Affidavit of the Assessor of Fountain Green Township.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, Charles A. McConnell, having been appointed (or elected) to the office of assessor in and for the town of Fountain Green, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) CHAS. A. McCONNELL.

Subscribed and sworn to this 7th day of May, A. D. 1894, before me—

(Signed) JOHN H. TAYLOR, *J. P.*

284 STATE OF ILLINOIS, } ss:
Hancock County, }

I, Chas. A. McConnell, assessor of Ft. Green township, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the town of Fountain Green, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

(Signed) CHAS. A. McCONNELL, *Assessor.*

Subscribed and sworn to this 2nd day of July, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Co. Clerk.*

Oath and Affidavit of the Assessor of Appanoose Township.

STATE OF ILLINOIS, } ss:
Hancock County, }

I, J. J. Heffleman, having been elected to the office of assessor in and for the town of Appanoose, in the county of Hancock aforesaid, do solemnly swear that I will support the Constitution of the
285 United States and the constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office to the best of my ability.

(Signed) J. J. HEFFLEMAN.

Subscribed and sworn to this 4th day of April, A. D. 1894, before me—

(Signed) JACOB ZEH, *J. P.*

STATE OF ILLINOIS, } ss:
Hancock County, }

I, J. J. Heffleman, assessor of the town of Appanoose, do solemnly swear that the book to which this is attached contains a correct and full list of all the real and personal property subject to taxation in the said town, so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, and that the footings of the several columns in said book and tabular statement returned herewith are correct, as I verily believe.

(Signed) J. J. HEFFLEMAN, *Assessor.*

Subscribed and sworn to this 28th day of June, A. D. 1894, before me—

(Signed) JOHN F. SCOTT, *Clerk.*

286 State rests.

This was all the evidence introduced.

Thereupon said cause was continued from time to time until January 30th, 1896, when the court overruled said objections. To which def't excepts.

Defendant prayed an appeal allowed upon giving bond and making — in 30 days and filing bill of exceptions in 90 days.

The foregoing is all the evidence and proceedings in said cause.

Defendant prays that this its bill of exceptions be signed and sealed and made part of the record in this cause, which is done accordingly.

Witness my hand and seal March 16th, 1896.

DAVID E. MACK, [SEAL.]
County Judge.

287 Be it remembered that afterward, to wit, on January 30th, 1896, the same being one of the days of the January term of said county court, an order of said court was entered of record, which is in the following words and figures, to wit:

STATE OF ILLINOIS, } ss:
Hancock County, }

In the Hancock County Court, to the January Term, A. D. 1896.

In the Matter of the Application of ROBERT AITCHISON, County Treasurer and *ex Officio* Collector of Hancock County, State of Illinois, for Judgment against the Delinquent Tax List.

Now, upon this 30th day of January, A. D. 1896, comes The People, appearing by said Robert Aitchison, treasurer and *ex officio* collector, with W. H. Hartzell, State's attorney for this county, and also Frank Halbower and O. F. Berry, of counsel, and "The Keokuk and Hamilton Bridge Company," by George Edmunds and John D. Miller, its attorneys, and the hearing of this application for judg-

ment herein and objections so filed by the said Keokuk and Hamilton Bridge Company to the entry of judgment for the tax, interest, and cost, amounting to four thousand twenty-three and forty-nine-hundredths ($4,023.49) dollars, against its property set forth in said application, now coming on, the hearing of said cause having been continued by agreement from term to term of this court from May 6th, 1895, to the present time, and the evidence in the matter of said application for judgment herein and the objections so filed by the Keokuk and Hamilton Bridge Company being heard and concluded, and the court, having heard the arguments of counsel and being sufficiently advised in that behalf, on due consideration doth overrule said objections and hold the same invalid and not sustained.

288 Thereupon the Keokuk and Hamilton Bridge Company, by its said attorneys, from the entry of judgment against its property, as aforesaid, prays an appeal to the supreme court of this State for the central grand division, which appeal is ordered by the court to be, and is, allowed by its giving and entering into bond, with Alfred N. Cherrill and Edward Cherrill as sureties, in the penalty of $100.00, payable to the People of the State of Illinois, conditioned in accordance with section 192 of chapter 120 of the Revised Statutes of this State, and depositing with the county collector the sum of $4,023.49, being the amount of money equal to the said judgment and costs, said bond to be filed and deposit made within thirty days of this date, and the liberty is given to the said Keokuk and Hamilton Bridge Company to file its "bill of exceptions" herein within ninety days of this date as of this time.

DAVID E. MACK, *Judge.*

Dated ——.

289 And afterwards, to wit, on February 11th, 1896, there was filed in the office of the clerk of this court the appeal bond of the said Keokuk and Hamilton Bridge Company, which is in words and figures as follows, to wit:

Know all men by these presents that we, the Keokuk and Hamilton Bridge Company, a corporation, as principal, and Edward Cherrill and Alfred N. Cherrill, as security, are held and firmly bound unto the People of the State of Illinois in the penal sum of one hundred dollars; for the payment of which, well and truely to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, the principal using its corporate and said security his private seal, and dated at —— this — day of ——, in the year of our Lord one thousand eight hundred and ninety-six.

The condition of the above obligation is such that whereas the said The People of the State of Illinois did, on the — day of January, one thousand eight hundred and ninety-six, at a term of the county court then being holden within and for the county of Hancock and State of Illinois, obtain judgments against the above-bounden The Keokuk and Hamilton Bridge Company's property for the sum of four hundred & twenty-three dollars and forty-nine

cents and costs of suit, from which judgment the said The Keokuk & Hamilton Bridge Company has prayed for and obtained an appeal to the supreme court of said State:

Now, if the said The Keokuk & Hamilton Bridge Company shall duly prosecute said appeal and shall, moreover, pay the amount of the costs, interest, and damages rendered and to be rendered against the property of the Keokuk & Hamilton Bridge
290 Company in case the said judgment shall be affirmed in the said supreme court, then the above obligation to be null and void; otherwise to remain in full force and virtue.

THE KEOKUK & HAMILTON BRIDGE COMPANY,
By ANDREW CARNEGIE, *Pr's't.* [SEAL.]

[SEAL.] Attest the corporate seal of said bridge company.

THEODORE GILMAN, *Secretary.* [SEAL.]
ALFRED N. CHERRIL. [SEAL.]
EDWARD CHERRIL. [SEAL.]

And on the same day, to wit, on February 11th, 1896, the Keokuk & Hamilton Bridge Company, by its attorney, G. Edmunds, filed in the office of the clerk of this court the receipt of Robert Aitchison, county collector, which is in words and figures as follows, to wit:

CARTHAGE, ILL., *Feb'y 26th*, 1896.

The People of the State of Illinois *ex rel.* Robert Aitchison, collector, *vs.* The Tax-list—The Keokuk and Hamilton Bridge Co., owner of property, judgment on the tax-last January 30th, 1896; total amount, $4,023.49—on appeal to supreme court.

Received of the Keokuk & Hamilton Bridge Company, J. H. Cole, supt., $4,023.49, deposited to perfect appeal to supreme court from above judgment.

ROBERT AITCHISON, *Collector.*

291 STATE OF ILLINOIS, } *ss:*
Hancock County, }

I, Elzey McClure, clerk of the county court and clerk of Hancock county, Illinois, hereby certify that the foregoing record contained in the preceeding pages is a full, true, and correct transcript of the proceedings and judgment in case of The People of the State of Illinois *ex rel.* Robert Aitchison, collector, against The Delinquent Tax List, so far as the same relates to the objections made by the Keokuk and Hamilton Bridge Company against judgment for taxes against the property of said bridge Co. for the year 1894, as the same now remain in my office in either records or files.

[SEAL.] In witness whereof I have hereunto set my hand — seal this 30th day of April, 1896.

ELZEY McCLURE, *Clerk.*

292 *Assignment of Errors.*

In the hearing and trial of the foregoing cause and the judgment therein rendered there is manifest error, for which appellant prays said judgment be reversed.

1st. The court erred in admitting improper, incompetent, and irrelevant evidence on the part of the People over the objection of defendant (appellant).

2d. The court erred in excluding proper, competent, and relevant evidence offered by defendant (appellant).

3d. The court erred in overruling defendant's (appellant's) objections to the rendition of judgment of the capital-stock tax (so called) and rendering judgment thereon. Among the reasons for said error are the following: A. Said capital-stock tax is a tax on personal, not on real, property, and is chargeable only at the place of the main office and place of business of defendant (appellant)—Keokuk, in the State of Iowa—and is made in violation of the rights of defendant (appellant), contrary to the laws regulating commerce between the States and contrary to the Constitution and laws of the United States. B. If any part of said capital stock of defendant (appellant) is taxable in Illinois, it can only be that portion thereof that would correspond to the length of the bridge in Illinois as compared to the whole length of bridge, represented by said capital stock—not exceeding one-half of said stock—yet the judgment is rendered for the tax assessed against the whole of the capital stock of defendant (appellant) as though all was located in Illinois.

4th. Said ruling and judgment of the court is clearly against the evidence, the clear preponderance of the evidence showing that the State line between the State of Illinois and Iowa at de-
293 fendant's (appellant's) bridge is only about 961 feet west of the east abutment of said bridge instead of 1,565 feet, as found by the court, the evidence being clear and conclusive by a large number of witnesses, who navigated and sounded the river, that the navigable channel of the river was over 2,200 feet wide at that point before the construction of the bridge, the middle of which is about 1,041 feet east of the center of the draw and 961 feet west of the east abutment of the bridge, and that before the bridge it was navigated by large and small boats, steam ferry-boats, etc., drawing more water than was found on the rapids immediately north therefrom (up the river), and contradicted only by a few pilots and steamboat captains, who never tried the water there, either by sounding or navigating, some of whom say that a soft-shell turtle could not go there, notwithstanding steamboats drawing from 2½ to 4 feet of water were constantly running there.

5th. The court erred in ignoring the act of Congress fixing the western boundary of the State of Illinois and rendering judgment for a tax levied against the property of defendant (appellant) as in Illinois, when many hundred feet thereof *is* in Iowa.

6th. The court erred in refusing to allow defendant (appellant) to amend its objections so as distinctly and beyond question — cover

that part of defendant's (appellant's) property known as the dike, from Main street, in Hamilton, to the bridge, the same being in three different descriptions, not concerned, but assessed as one tract.

7th. The court erred in overruling defendant's (appellant's) objections to judgment against the tangible property known as the dike and rendering judgment against the same.

8th. The court erred in overruling defendant's (appellant's) objections to judgment for said several taxes or either of them and rendering judgment against appellant's property for all of said claimed taxes, both real and personal.

For which manifest errors appellant prays that said judgment be reversed.

G. EDMUNDS,
Att'y for Appellant.

294 (Indorsed on back:) The Keokuk & Hamilton Bridge Company, appellant, *vs.* The People of the State of Illinois, appellee. Record. G. Edmunds, att'y for appellant. Filed May 28th, 1896. E. A. Snively, clerk.

295 And be it further remembered that afterwards, to wit, on the 5th day of June, A. D. 1896, an order was made in said cause in the words and figures following, to wit:

KEOKUK & HAMILTON BRIDGE CO.
vs.
THE PEOPLE *ex Rel.* } No. 15.

Appeal from county court of Hancock.

On this day come the said parties, by their attorneys, and this being one of the days set apart for the call of the docket under the rules or orders of the court for this term, and this cause coming now on to be heard, the appellant having entered motion to reverse the judgment and remand said cause and for costs, and the appellee having entered motion to affirm the judgment herein and for costs and for *procedendo*, and said motions being taken under advisement for final hearing, and the clerk reporting to the court that said cause is now ready to be taken on the call of the docket, it is ordered by the court that this cause be now submitted upon the record, abstracts, briefs, and arguments filed and to be filed herein under the rules or order of the court; and it is further ordered by the court that this cause be now taken under advisement for final hearing.

And be it further remembered that afterwards, to wit, on the 18th day of January, A. D. 1897, an opinion was filed in said cause in the words and figures following, to wit:

THE KEOKUK & HAMILTON BRIDGE COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS.
} Appeal from County Court of Hancock.

Opinion by WILKIN, *J.:*

This is an appeal from a judgment of the county court of Hancock county for delinquent taxes assessed against appellant for the year 1894. The grounds of reversal are, first, the assess-
296 ments were fraudulently made; second, the whole of the capital stock is assessed in this State, whereas an undivided half of it is taxable in Iowa; third, the judgment is upon an assessment upon a part of appellant's bridge not in Illinois, but in the State of Iowa. The facts upon which the first two grounds are based are substantially the same as those upon which similar objections were urged in cases between the same parties in 145 Ill., 596; 161, Ill., 132, and *id.*, 4, 514, and are disposed of adversely to appellant by these decisions.

The last point is based upon the contention that the State line crosses the bridge of appellant at a place marked by the commissioners appointed in Iowa *vs.* Illinois, 147 U. S., 1. The record now before us shows that the order of the Supreme Court of the United States confirming the report of these commissioners was subsequently set aside and vacated. The commissioners who made that report were examined as witnesses on the hearing below on behalf of appellants, and it is clear from their testimony that they fixed the line between the two States at the center of the river and not at the center of its main channel. The decree of the Supreme Court of the United States under which they were appointed ordered *that* "that the boundary line between the State of Iowa and the State of Illinois is in the middle of the main navigable channel of the Mississippi river, and, as the counsel of the two States desire that this boundary line be established at the nine bridges across the Mississippi river, it was further ordered that a commission be appointed to ascertain and designate at said places the boundary line between the two States, such commission consisting of three competent persons to be named by the court, upon suggestion of counsel, and be required to make the proper examination and to delineate on maps prepared for that purpose the line as determined by this court and report the same to this court
297 for its further action."

Following that decree and other authorities cited in the opinion, we said, in the case in 145 Ill., *supra:* "Under these authorities we think it is plain that the boundary line between Iowa and Illinois, where the bridge of appellant is constructed, is the middle of the main channel of the river, the thread of the stream." Accepting the uncontroverted testimony of witnesses in that case as fixing the center of the main channel, and hence the State line, at a certain point, it was held that a portion of the bridge in the State of Iowa had been improperly assessed as in this State. In the present case 1,567 feet *was* assessed as being in Illinois and 625 treated as being in Iowa. Several experienced river men, captains and pilots

of steamboats running on the Mississippi river at that point for a great many years, both before and since the bridge was built, were introduced by the People in this case and testified that the east side of the navigable channel at the bridge was not to exceed 550 feet east from the Iowa shore. It is conceeded if the State line is where the testimony of these witnesses fixes it all that part of the bridge included in this assessment is in this State. Although appellant introduced several witnesses, including the commissioners above mentioned, for the purpose of establishing the line further east, they do not contradict the People's witnesses as to the location of the main or navigable channel, but they treat the middle of the bed of the river as the thread of the stream. At least we think the county court was justifiable in finding from all the evidence that no part of the bridge assessed is in the State of Iowa. Its judgment will accordingly be affirmed.

And be it further remembered that afterwards, to wit, on the 18th day of January, A. D. 1897, an order was made by said court in the words and figures following, to wit:

298	THE KEOKUK AND HAMILTON BRIDGE Company *vs.* THE PEOPLE OF THE STATE OF ILLINOIS on the Relation of Robert Atchison, County Collector of Hancock County.	Appeal from County Court, Hancock.

On this day come again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erronious, vicious, or defective, and that the record is no error, therefore it is considered by the court that the motions heretofore made to reverse the judgment and remand said cause for a new trial be, and the same are, denied, and the motion heretofore made to affirm the judgment herein is allowed, and it is therefore ordered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the matter and things therein assigned for error, and that motion for *procedendo* be allowed; and it is further considered by the court that the appellee recover of and from the said appellant costs by him in this behalf expended, and that he have execution therefor.

And be it further remembered that afterwards, to wit, on the 27th day of January, A. D. 1897, a petition for rehearing was filed in said cause; which petition for rehearing is in the words and figures following, to wit:

299 In the Supreme Court of Illinois, Central Grand Division, at Springfield.

Argued in this court at June term, 1896, and decision and opinion filed January 18th, 1897.

THE KEOKUK & HAMILTON BRIDGE COMPANY, Appellants,
vs.
THE PEOPLE OF THE STATE OF ILLINOIS, Appellees.
} Appeal from Hancock County Court.

Petition for Rehearing.

To the supreme court of State — Illinois:

The petition of the Keokuk and Hamilton Bridge Company, appellant, by G. Edmunds, its attorney, prays a rehearing in this cause, and states as reasons for such rehearing the following:

First. That this court, in its decision in this cause, wholly neglected to pass upon the question presented by appellant as to the rendition of judgment against two or more tracts of land assessed together, as though one tract, as will be seen by reference to Ab., p. 31, Record, p. 35, 36, and 37, wherein it appears that three different descriptions of land, two of which adjoin each other, and the third being about four hundred feet distant from said tracts and do not join, assessed together as one tract, and judgment rendered in the county court against them as one tract, contrary to the laws of Illinois. Sec. 4, par. 1, chap. 120, R. S., and How. *v.* People, 86 Ill., p. 288.

300 The court, in its opinion and judgment, seemed to have entirely overlooked the question presented in this case in *in* said record, abstract, and Appellant's Brief, at pages 4 and 5.

Second. Because said court, in its opinion and judgment, seemed to have entirely overlooked the question presented by appellant as to the testimony and declarations of Prentice, the assessor, made while making the assessment, and the refusal of the county court to allow the witness Prentice to testify in relation thereto. See Plaintiff's Brief, pages 21 to 23 and 52, 53, and Ab., p. 6 to 25, and pages 51 to 53.

Third. Because the court, by its decision, hold that the act of Congress of April 18th, 1818, known as the enabling act, and defining the western boundary of Illinois, does not mean what it says, to wit, that the western boundary of Illinois is along the middle of the Mississippi river, but, on the contrary thereof, means that the western boundary of Illinois is in the middle of the steamboat channel or channel most used by steamboats in carrying commerce up and down the river; that said decision in this cause is contrary to said act of Congress, also to the constitution of the State of Illinois, adopted thereunder and approved by Congress, and is contrary to the decisions of the Supreme Court of the United States in Missouri against Kentucky, 11 Wallace, p. 395; also contrary to the decision of the Supreme Court of the United States in the case of the Mis-

sissippi and Missouri Railway Company against Ward, Second Black, page 485; The City of St. Louis *v.* Rutz, 138 U. S., page 226; Morgan & Harrison against Reading, Third Smeads and Marshall, page 366; Duluth and Dubuque Bridge Company against Dubuque County, 55 Iowa, p. 558; St. Louis Bridge Company against East St. Louis, 121 Ills., p. 238–245, and other cases referred to on page 29 of Appellant's Original Brief.

Fourth. That the court, in disregard of the laws of the United States, rendered judgment against appellant's property for the whole of the capital-stock tax when only one-half was liable
301 to be taxed in Illinois. See authorities referred to in Original Brief, page- 50 to 53.

Fifth. The court in its decision ignore the treaty of 1763, establishing the boundary line between the French and English territories at the middle of the Mississippi river. See Appellant's Brief, pages 53 to 55.

By reason of which several errors and omissions on the part of this court appellant, The Keokuk and Hamilton Bridge Company, pray that this its petition for rehearing be granted and a reargument ordered by the court.

All of which is respectfully submitted.

THE KEOKUK & HAMILTON BRIDGE CO.,
By G. EDMUNDS, *Attorney.*

G. EDMUNDS, *Of Counsel.*

And be it further remembered that afterwards, to wit, on
302 the 2nd day of June, A. D. 1897, the following proceedings were had, to wit:

KEOKUK & HAMILTON BRIDGE CO. *vs.* THE PEOPLE *ex Rel.* } Petition for Rehearing.

And now, on this day, come the respective parties herein by their attorneys, and the court being now sufficiently advised of and concerning the premises, the petition for a rehearing of said cause is denied.

And the petitioner by its attorney moves the court for a suspension of judgment until September 1st, 1897, and the court, not being sufficiently advised of and concerning the premises, takes said motion under advisement.

And be it further remembered that afterwards, to wit, on the 4th day of June, A. D. 1897, the following order was made by the court in words and figures following, to wit:

KEOKUK & HAMILTON BRIDGE CO. *vs.* THE PEOPLE *ex Rel.* } Petition for Rehearing.

And now, on this day, comes the petitioner herein by attorney, and the court, being now sufficiently advised of and concerning the

premises, allows the motion for a suspension of judgment, and it is ordered that all proceedings thereunder be suspended and stayed until the first day of September, A. D. 1897.

And be it further remembered that on, to wit, the 2nd day of June, A. D. 1897, the following petition was filed in the office of the clerk of said supreme court:

To the Hon. Jesse J. Phillips, chief justice of supreme court of Illinois:

Your petitioner, The Keokuk & Hamilton Bridge Company, respectfully represents to your honor that it is a consolidated
303 corporation of the States of Illinois and Iowa, formed by the consolidation of a corporation of Illinois formed under special law authorizing the construction of a bridge over the Mississippi river, the boundary line between Illinois and Iowa, and a corporation of Iowa formed under the general laws of Iowa for like purposes, one-half thereof being in Iowa and one-half in Illinois, and as such consolidated corporation has a total capital stock of $1,000,000, one-half of which is taxable in Iowa and the other half in Illinois, and owns a bridge over said river, one-half of which is assessed and taxed in Iowa and over two (⅔) thirds of the tangible property and all said capital stock is assessed and taxed as in Illinois, when, in the opinion of your petitioner, only one half of either tangible property or capital stock is assessable or taxable in Illinois; that your petitioner, said Keokuk and Hamilton Bridge Company, under said consolidated charter, erected & own a bridge over said river, about 2,200 feet in length, and constructed approaches on both sides of said river, from shore to shore, to the bridge, that on the Iowa shore being about two hundred feet in length & that on the Illinois shore about 700 feet in length; that the open or main channel of the river, navagable before the construction of said bridge, was over 2,400 feet; that the middle of the main channel of said river before said bridge was about 961 feet west of the east abutment of said bridge and about 1,240 feet east of the west abutment of said bridge, which point, in the opinion of petitioner, is the boundary or State line between the States of Illinois and Iowa at that point.

That the State of Iowa assesses & taxes as in Iowa the west half of said bridge, 1,100 feet, & west approaches, and the authorities in the State of Illinois assess and tax as in Illinois 1,565 feet of said bridge and said east approach, thereby taxing as in Illinois at least
465 feet of said bridge in Iowa and, as petitioner believes,
304 674 feet of said bridge proper situated in Iowa and by far the most expensive & valuable part thereof; that the boundary line between the States of Illinois and Iowa is the middle of the main channel of the river, where the same was fixed by the treaty between Great Britain, Spain, & France in 1763 and as fixed by act of Congress enabling Illinois to form a constitution.

That in disregard of said treaty & act of Congress and in disregard & violation of the rights of petitioner, the authorities in Illinois

assess and tax as in Illinois from 465 to 674 feet of said bridge situated out of the State of Illinois and in the State of Iowa.

That said bridge is an interstate bridge, having no business but interstate business commerce, and by such assessment and taxation said State of Illinois imposes an unauthorized burden upon such interstate commerce, in violation of the interstate laws of Congress.

That in the opinion of your petitioner such taxation by the authorities of Illinois is a clear violation of the said treaty of 1763 and of the act of Congress enabling the State of Illinois to form a State constitution and making the middle of the Mississippi river the western boundary of Illinois, and is also in violation of the interstate-commerce law, tending, as it does, to burden such interstate commerce by imposing upon it double taxation as to one-half thereof.

That the home and principal place of business of said consolidated corporation is at Keokuk, in the State of Iowa, and draws to it the personal property of said consolidated corporation.

The capital stock, being personal property, is only taxable at the place of its principal place of business, and therefore such taxation on the part of the authorities in Illinois violates both said act of Congress—the enabling act—and interstate-commerce law, and work-great hardship upon petitioner.

305 Your petitioner further shows unto your honor that the People of the State of Illinois recovered a judgment in the county court of Hancock county, Illinois, at its January term, 1896, for a tax levied by said State of Illinois and its municipalities against the property of petitioner, on both its tangible property and on its capital stock, for $4,247.64, from which your petitioner prayed an appeal, which was granted, to the supreme court of Illinois, central grand division, the highest court in said State, and said supreme court, at its January term, 1897, affirmed said judgment, and at its June term, 1897, refused a motion on petition for rehearing therein.

That, upon the hearing in the county court and also in said supreme court, it was urged by petitioner that, under said treaty of 1763 and the laws of Congress, said authorities in Illinois had no right to tax any of said tangible property not in Illinois or west of the middle of the main open body of said river navigable or to exceed one-half of said capital stock.

That in the decisions of said county court and by said supreme court the said treaty of 1763, said enabling act, and interstate-commerce law is disregarded in this, that said real and personal property capital stock belonging to said bridge company and properly located and taxable in Iowa is improperly taxed by the authorities in Illinois as in Illinois.

That on the trial in the county court as shown by the record and in the hearing in the supreme court it was urged that no part of the said property in Iowa could be taxed in Illinois, and that in no event could more than one-half said capital stock be taxed in Illinois.

That said court could not have held said property liable to the tax assessed unless by disregard of said treaty and act of Congress

or holding the same as void so far as controlling the taxable powers of Illinois.

306 That thereby a Federal question was presented for decision by the supreme court of Illinois, and that its decision was necessary for the decision of said question, and said Federal question was decided by the decision of said supreme court that the boundary between Illinois & Iowa is not, as designated by said treaty & said act of Congress, in the middle of said river, but is over 600 feet west thereof, in the middle of the steamboat channel of said river, and that the entire capital stock of said corporation was taxable and properly taxed in Illinois; that said judgment of the county court could not have been affirmed without the supreme court so deciding said Federal question.

All of which appears in said record and proceedings, whereby manifest error happened, to the great damage of your petitioner. Wherefore it prays for the allowance of a writ of error and citation and such other process as may cause the same to be corrected by the Supreme Court of the United States.

June, 1897.

THE KEOKUK & HAMILTON BRIDGE COMPANY,
By G. EDMUNDS, *Its Attorney.*

The writ of error herein prayed for is allowed.
June 2, 1897.

JESSE J. PHILLIPS,
Chief Justice of the Supreme Court of the State of Illinois.

And be it further remembered that afterwards, to wit, on the 2nd day of June, A. D. 1897, there was filed in the office of the said clerk of the supreme court a bond, which is in the words and figures following, to wit:

307 In the Supreme Court of the United States.

THE KEOKUK AND HAMILTON BRIDGE COMPANY, Plaintiff in Error, *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, Defendant in Error.	Error to the Supreme Court of Illinois, Central Grand Division.

Know all men by these presents that the Keokuk and Hamilton Bridge Company, a consolidated corporation of Illinois and Iowa, as principal, and Alfred N. Cherrill & Edward Cherrill, as security, are held and firmly bound unto the People of the State of Illinois in the penal sum of five hundred dollars, upon the condition following:

Whereas the Keokuk and Hamilton Bridge Company has sued out a writ of error from the Supreme Court of the United States to the supreme court of the State of Illinois for the central grand division for the review and reversal of a judgment of said supreme court of Illinois rendered on the 18th day of January, A. D. 1897, at Springfield, in a certain cause there pending on appeal from the

county court of Hancock county, Illinois, wherein the said The Keokuk and Hamilton Bridge Company was appellant and the People of the State of Illinois appellee:

Now, if said The Keokuk and Hamilton Bridge Company shall prosecute its said writ of error with effect and without delay, and shall pay all such costs and damages as shall be awarded against it on the trial on said writ of error, then this obligation to be void; else of full force and effect.

In witness whereof the Keokuk and Hamilton Bridge Company has caused this bond to be signed by its vice-president, countersigned by its secretary, and sealed with its corporate seal, and said security has signed the same with his own hand this 2nd day of June, A. D. 1897.

308 THE KEOKUK AND HAMILTON BRIDGE COMPANY.

[SEAL.] By MATTHIAS NICOLL, *Vice-Pres'd't.* [SEAL.]

THEODORE GILMAN, *Secretary.*

A. N. CHERRILL. [SEAL.]

EDWARD CHERRILL. [SEAL.]

Approved:

JESSE J. PHILLIPS, *C. J.*

STATE OF ILLINOIS, *Sangamon County,* } *ss:*

George Edmunds, being duly sworn, says that Alfred N. Cherrill & Edward Cherrill, the securities on the above bond, are bankers at Hancock county, Illinois, and are each worth above their debts and legal liabilities over the sum of five thousand dollars.

G. EDMUNDS.

Subscribed and sworn to before me June 2d, 1897.

JESSE J. PHILLIPS, *C. J.*

309 UNITED STATES OF AMERICA, *ss:*

To the People of the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, eighteen hundred and ninety-seven, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois in and for the central grand division, at Springfield, wherein The Keokuk & Hamilton Bridge Company is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Hon. Jesse J. Phillips, chief justice of the State of

Illinois, this 2d day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

JESSE J. PHILLIPS,
Chief Justice of the Supreme Court of the State of Illinois.

Service of citation acknowledged June 2d, 1897.

E. C. AKIN, *Att'y Gen.*
STERLING P. LUMMAN,
State's Attorney of Hancock County.

[Endorsed:] Keokuk & Hamilton Bridge Co. *v.* The People. Citation and acknowledgment of service. Filed Jun-4, 1897. A. D. Cadwallader, clerk supreme court.

310 I, A. D. Cadwallader, one of the clerks of the supreme court of the State of Illinois, duly elected and qualified in and for what was formerly known as the central grand division, do hereby certify that the above and foregoing is a true and correct copy of the original record in a certain cause wherein The Keokuk and Hamilton Bridge Company was the appellant and The People of the State of Illinois were the appellees, and also a true and correct copy of all the proceedings had and of record in the said supreme court, and also a true and correct copy of the bond filed in said cause; also the original citation and acknowledgement of service thereof, as the same appears from the records and files of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of the supreme court, at Springfield, Illinois, this 21st day of July, A. D. 1897.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1818.]

A. D. CADWALLADER,
Clerk of the Supreme Court.

311 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the supreme court, before you or some of you, being the highest court of law or equity in the said State in which a decision could be had in the said suit between The People of the State of Illinois, defendant in error, and The Keokuk & Hamilton Bridge Company, plaintiff in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground *to* their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was against the plain letter & their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held

under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings
312 aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within — days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 2d day of June, in the year of our Lord one thousand eight hundred and ninety-seven.

{The Seal of the Circuit Court of the United States for the South'n Dist. Ill.}

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

HON. JESSE J. PHILLIPS,
Chief Justice of the Supreme Court of the State of Illinois.

JAMES T. JONES,
Clerk U. S. Circuit Court, Southern Dist. of Ill.

[Endorsed:] Filed Jun- 2, 1897. A. D. Cadwallader, clerk supreme court.

313 JULY 21ST, A. D. 1897.

In obedience to the above and foregoing writ of error I herewith return a full, true, and correct copy of the original record in said cause, together with a full, true, and correct copy of all the proceedings had and of record in said cause in the supreme court of the State of Illinois, central grand division; also the original citation and acknowledgment of service filed herein; and I hereby certify that a copy of this writ of error is now on file in my office in the city of Springfield, county of Sangamon and State of Illinois, the same having been filed by the plaintiff in error on the 2nd day of June, A. D. 1897, for the defendant in error, and so endorsed.

Witness my hand and the seal of the supreme court of the State of Illinois this 21st day of July, A. D. 1897.

[Seal of the Supreme Court, State of Illinois, Aug. 26, 1818.]

A. D. CADWALLADER,
Clerk Supreme Court.

314 In the Supreme Court of the State of Illinois.

KEOKUK AND HAMILTON BRIDGE COMPANY
vs.
THE PEOPLE OF THE STATE OF ILLINOIS. } At Law.

Assignment of Errors.

The plaintiff in this action in connection with its petition for a writ of error to the Supreme Court of the United States makes the following assignments of errors which it avers occurred upon the trial of this cause in the county court of Hancock county and in the supreme court of the State of Illinois, to wit:

1. The court erred in holding that the State of Illinois could tax plaintiff's entire capital stock in that State when about one-half of its bridge was located in the State of Iowa.

2. The court erred in holding that the State of Illinois could tax the entire capital stock of plaintiff company when its general office and principal place of business was in the State of Iowa and not in the State of Illinois.

3. The court erred in holding that the State of Illinois had the right to tax the entire capital stock of plaintiff in error, a consolidated corporation of the States of Iowa and Illinois, owning a bridge upon the Mississippi river, the boundary line between said States of Illinois and Iowa, when one-half thereof was located in the State of Iowa, and under the treaty between Great Britain, Spain, & France, in 1763, making the middle of the Mississippi river the boundary line forever, and of the act of Congress enabling the State of Illinois to form a constitution fixing the western boundary of Illinois at the middle of said river.

315 4. The court erred in holding that the State of Illinois had the right to tax the entire capital stock of plaintiff in error because the same is in violation of the Constitution of the United States as imposing a burden upon the commerce between the States of Illinois and Iowa.

5. Because the same is in violation of the interstate-commerce law.

6. Because the judgment of the supreme court of Illinois creates a double taxation upon plaintiff's property by taxing its bridge and entire capital stock when one-half of said bridge is in the State of Iowa, and in deciding that the boundary between said States is not, as declared by said treaty and said act of Congress, in the middle of said river, but is over 600 feet west thereof, in the middle of the steamboat channel of said river at that point, and thereby improperly construing said treaty and act of Congress.

7. The court erred in entering judgment in favor of the defendant in error and against the plaintiff in error.

Wherefore the said Keokuk and Hamilton Bridge Company, plaintiff in error, prays the judgment aforesaid may be reversed,

annulled, and altogether held for nothing, and that it may be restored to all things which it lost by occasion of said judgment.

G. EDMUNDS AND
HUGHES & ROBERTS &
F. T. HUGHES,
Attorney- for Plaintiff in Error.

[Endorsed:] Filed Jun- 2, 1897. A. D. Cadwallader, clerk supreme court.

Endorsed on cover: Case No. 16,684. Illinois supreme court. Term No., 175. The Keokuk and Hamilton Bridge Company, plaintiff in error, *vs.* The People of the State of Illinois. Filed October 9th, 1897.

No. 26

IN THE

FILED
JAN 19 1899
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1898.

Brf. of Davidge & Davidge for P.

Filed Jan. 19, 1899.

THE KEOKUK AND HAMILTON BRIDGE COMPANY,
PLAINTIFF IN ERROR,

v.

THE PEOPLE OF THE STATE OF ILLINOIS.

No. 175.

BRIEF OF PLAINTIFF IN ERROR.

W. N. Davidge & W. D. Davidge Jr.
~~DAVIDGE & DAVIDGE,~~
Attorneys for Plaintiff in Error.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1899.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

THE KEOKUK AND HAMILTON BRIDGE COMPANY, PLAINTIFF IN ERROR, v. THE PEOPLE OF THE STATE OF ILLINOIS.	No. 175.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The plaintiff in error is a consolidated corporation formed by the consolidation of a corporation in Iowa with one in Illinois, owning and operating a bridge across the Mississippi river between Keokuk in Iowa and Hamilton in Illinois, and having its main office at Keokuk (R. 1, 2, 3, 17, 175, 176).

The bridge was used entirely for commerce between the States of Iowa and Illinois, two railroads, wagons, and passengers crossing from State to State (R. 82, 84, 85, 99, 106, 136, 137).

The authority to construct and maintain it and to take compensation was given to the two corporations by act of Congress, 25th July, 1866.

14 Stat. 244–6.

On the 2d of May, 1895, the collector of taxes for the county in Illinois where the town of Hamilton is situated moved for judgment against certain delinquent tax-payers, the plaintiff in error among them. The tax was on the tangible property of the company, consisting in part, as described, of "a strip of land eighty feet wide, more or less, the center line of said strip of land commencing at a point in the center of Railroad avenue, in the plat of ground known as the Keokuk and Hamilton Ferry and Manufacturing Company's addition to the city of Hamilton, in said county, 707¾ feet south 72 degrees and 40 minutes east of the center of the east end of said bridge, thence running north 72 degrees 40 minutes west to the east end of said bridge; thence continuing the same course along the center line of said bridge 1,765 *feet to the State line* between the State of Illinois and Iowa, including the slopes, walls, embankments, abutments, piers, and bridge structure and improvements thereon," assessed at $79,900, and also on the capital stock, assessed at $30,080 (R. 1, 2, 21, 22, 24).

The assessment of the capital stock, $30,080, was arrived at by taking the estimated value of the capital stock and subtracting therefrom the value of the tangible property assessed in Illinois (R. 147).

The tax on the above-mentioned tangible property was $2,708.61, and on the capital stock $1,019.17 (R. 25.)

The tangible property—that is, the bridge—was assessed at more than its value, and other real property in the same county was assessed at from one-fourth to one-third of its value (R. 58, 61–71, 9–17).

The bridge company objected to the rendition of judgment upon the ground that the bridge was assessed at largely more than its fair cash value; that over six hundred feet of the bridge was located in Iowa and not subject to taxation in Illinois (R. 2, 3, 4), and furthermore that the tax upon the capital stock was, in effect, a tax upon interstate commerce; that it was levied upon the whole capital stock when only a part, if any, was assessable in Illinois, and that the assessment was not made in accordance with the rules of the State board of equalization (R. 21, 22, 140–146).

The court, however, entered judgment for the full amount claimed, from which judgment an appeal was taken to the Supreme Court of Illinois, and the latter court having affirmed the judgment, a writ of error was sued out and the case brought here (R. 193, 194, 195, 199, 202, 204, 206).

Assignment of Errors.

There was error:

1. In holding that the State of Illinois could tax the plaintiff in error's bridge to the steamboat channel rather than to the middle of the main navigable channel as recognized by the treaties, acts of Congress, and decisions of this court.

2. In sustaining the tax which was illegal because it was admittedly unequal.

3. In sustaining the tax on the bridge which was illegal because some of the bridge assessed was beyond the jurisdiction of the State of Illinois.

4. In holding that the State of Illinois could tax the capital stock of the plaintiff in error, the tax being a tax on interstate commerce.

5. In holding that the State of Illinois could tax the entire capital stock of the plaintiff in error, said plaintiff being a consolidated corporation formed by the consolidation of a corporation of Iowa and one of Illinois, and having its principal office at Keokuk, in the State of Iowa.

6. In sustaining the tax on the capital stock based upon an assessment which was arrived at by taking the value of the entire capital stock and deducting therefrom the value of the part of the bridge in Illinois.

7. In sustaining the tax of the franchise to construct and maintain the bridge and fix the compensation for the use thereof granted by the Federal Government.

Points.

I.

Part of the bridge as taxed by Illinois was in Iowa.

In order to determine whether the State of Illinois has taxed property beyond her limits and within the limits of the State of Iowa, it becomes necessary to ascertain the boundary line between the two States.

The defendant in error claims that the boundary is not in the middle of the main navigable channel of the Mississippi river, but in the middle of the steamboat channel which is at or near the draw-span of the bridge and near the Iowa shore.

On the other hand, the plaintiff in error contends that the line separating the jurisdiction of the two States is at the middle of the navigable channel of the river.

By the treaty of peace concluded in 1763 by Great Britain, France, and Spain, the boundary between the English and French territories was fixed as "a line drawn

along the middle of the river Mississippi from its source to the river Iberville," in Louisiana.

Subsequently by the treaty of Paris in 1783, Great Britain ceded to the United States all possessions east of a "line drawn along the middle of the Mississippi river."

Jenkenson's Collection of Treaties, p. 410.

And still later, in 1803, France ceded to the United States all her territory west of said line.

8. Stat. 208.

The act of Congress enabling the people of Illinois to form a State constitution defines the boundaries of the State as follows: Starting in the middle of Lake Michigan, at north latitude forty-two degrees and thirty minutes, "thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river."

3 Stat. 428.

And the subsequent constitutions of Illinois, of 1818, 1848, and 1870, defined the western boundary in the same way. Ill. Rev. Stat., 1893, Hurd.

The enabling act of Missouri made the eastern boundary of that State the same line.

3 Stat. 545.

The courts of the States bordering on the Mississippi have frequently passed on this question and have fixed the boundary at the middle of the river.

Dunlieth & Dubuque Bridge Co. *v.* County of Dubuque, 55 Iowa, 558.

Morgan *v.* Reading, 3 Sm. & Mar. (Miss.) 366.

And this court has held the same.

Missouri *v.* Kentucky, 11 Wall. 395.
Miss. & Mo. R.R. Co. *v.* Ward, 2 Black, 485.
St. Louis *v.* Rutz, 138 U. S. 226.
Jones *v.* Soulard, 21 How. 41.
The Schools *v.* Risley, 10 Wall. 91.

And the decisions of Illinois are to the same effect.

Middleton *v.* Pritchard, 3 Scammon, 510.
Brooklyn *v.* Smith, 104 Ill. 429.
Trustees of Schools *v.* Schroll, 120 Ill. 509.

And these were followed by the case of Buttenuth *v.* St. Louis Bridge Co., in which the Supreme Court of Illinois, while admitting the general doctrine as above stated, sought to define the middle of the channel or the middle of the river as "the space within which ships can and usually do pass."

Buttenuth *v.* St. Louis Bridge Co., 123 Ill. 535.

The Supreme Court of Iowa had held that not the channel but the middle of the bed of the river was the true boundary.

Dunlieth & Dubuque Bridge Co. *v.* Dubuque, 55 Iowa, 558.

And in 1891, in order that the boundary between the two States might be settled, the State of Iowa filed a bill against the State of Illinois in this court, to which the latter filed a cross-bill and this court, 3d January, 1893, decreed that the boundary line was "the middle of the main navigable channel of the Mississippi river," and appointed a commission of three competent persons, named by the court upon the suggestion of counsel, to ascertain and designate the boundary line at the nine bridges that were across the

river, one of which was the bridge of the plaintiff in error, and report to this court (R. 147, 167).

The record in that case was offered in evidence in the present case and will be found at pages 147–175 of this record. The case is reported in 147 U. S. 1.

On the 7th of March, on the request and stipulation of the attorneys-general of the two States, the courts appointed as commissioners Montgomery Meigs, a United States civil engineer; John R. Carpenter, a United States inspector, who had been employed in the neighborhood for twenty-five years and most of that time on the Des Moines Rapids canal, by which boats went to Keokuk at low water; and Albert Wempner, a licensed pilot of over forty years standing. The court at the same time ordered the commissioners to proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge. The commissioners then took the required oath faithfully to perform the duties of the office (R. 167, 168, 169, 131, 127, 128, 134).

On the 30th of March, 1893, the report of the commissioners was filed. The report stated that—

"after qualifying under oath, as by law provided, and after most careful consideration of the decision of your honorable body in the case above mentioned, your commissioners proceeded, as directed by you, to survey and fix the boundary line between Iowa and Illinois on the Keokuk and Hamilton bridge at Keokuk, Iowa.

"Your commissioners find that the said boundary line is situated (1,041.65) ten hundred and forty-one and sixty-five one-hundredths feet easterly of the center of the draw-span, measured along the axis of the bridge and crossing the structure in a direction parallel to the piers of the bridge.

"Your commissioners also respectfully submit the accompanying plat showing their measurements along the

bridge and to neighboring monuments as a matter of further record" (R. 171).

On the 10th of April, 1893, the report was confirmed.

Afterwards, 4th January, 1894, on motion of the State of Illinois the order confirming the report was, on account of some irregularity of the notice, stricken out and since then no steps have been taken. The report is still before the court awaiting confirmation (R. 172–175).

The commissioners were examined in the trial of the case at bar and they testified how they proceeded to locate the center of the navigable channel.

The bed of the river at this point is flat rock (R. 108, 112, 115, 128, 131, 132, 134). They took the water at an ordinary stage and in the middle of the main navigable channel they placed the mark upon the bridge (R. 129, 130, 133, 134, 136). As Meigs testified:

"We first inspected the river in the vicinity of the bridge on both shores; we consulted all the maps and references available, and, as we found, we were obliged to place the boundary in the middle; this implied that the channel should have two boundaries, equal distance from the line we were to locate. In considering this question we took into account the general navigability of the river; we consulted the records, which had been kept for years at Keokuk, of the stages of the water above low water, and we first fixed upon an average stage. This we found, from about twenty years' observation, to be six feet and one-tenth above low water. We fixed the line on the west side where this met the river bed before it was disturbed by construction, and we did the same on the east side. We found that a line ten hundred and forty-one feet easterly from the centre of the pivot pier was half way between these points, and we marked that as the boundary.

"If you had marked the middle of the river, measuring

from shore to shore, would the boundary line have been east or west of the point you marked as the middle of the main channel?

"If we had measured from the natural banks and located the boundary line half way between, it would have been somewhat east of its present position." (R. 133–134.)

And to like effect was the testimony of Wempner:

"We proceeded to find an average stage of water, between which points we found the main navigable channel of the river, and, measuring, found the eastern boundary of the channel thus defined to the westerly boundary of the channel thus defined, divided the distance in the middle, and marked the same upon the bridge at Keokuk ten hundred and forty-one and sixty-five hundredths feet east of the draw pier of said bridge.

"How much of the main channel that you have described would be navigable at an ordinary state of water if all artificial obstructions were removed?

"All of it." (R. 136.)

One would think that the testimony of these three experts to whom the States had agreed to entrust the fixing of the boundary between the States under the decision of this court would have been sufficient. The defendant in error, however, taking advantage of the fact that the order confirming the report of the commissioners had been stricken out, and that the report was still unconfirmed, offered a good deal of evidence to prove that the channel of the river was at or just east of the draw-span of the bridge. The most casual perusal of the record will show, however, that these witnesses, mostly steamboat pilots, testified as to the existence of a channel on the Iowa side of the river, and that they were not endeavoring to fix the main navigable channel as defined by this court. These witnesses testified as to where the steamboats ran up and

down the river. But there is no doubt as to this fact. Steamboats ran on the Iowa side and also (before the artificial obstructions were built) on the Illinois side (112, 113, 116, 132). And in the middle (R. 111, 112, 114). Indeed ferries ran across between Keokuk and Hamilton (R. 108, 109, 110, 112, 113).

None of these witnesses, however, had taken any regular soundings, or knew the bed of the river (R. 37, 41, 47, 49, 51, 54, 56). What they knew was that the channel followed by steamboats was on the Iowa side. Indeed it is on that side that the draw-span is built. But this is fully explained by the commissioners and other witnesses. Steamboats took the western side of the river to get into the canal that had been built on the Iowa side, and it was to enable boats to do this that the draw-span was built on that side (R. 111, 128, 130, 131, 133).

II.

Part of the bridge assessed by Illinois being beyond her jurisdiction, and the tax therefore illegally imposed, the whole tax is vitiated.

Santa Clara County *v.* South. Pac. R.R., 118 U. S. 394, 416.

Phila. Fire Assn. *v.* New York, 119 U. S. 110.

III.

The tax on the bridge was illegal because not equally assessed.

The other property in the county was assessed at one-third to one-fifth its real value. This is proven by the assessors themselves (R., 58, 61–71, 9–17). The bridge

was assessed at $79,900—that is 1565 feet, but the evidence of engineers and bridge-builders shows that that part of the bridge, including the Illinois approach, was only worth about $70,300, and that a new structure at that time would only have been worth $96,000. The life of a bridge of this description is about fifty years, and this bridge was finished in 1871 (R., 83, 90, 99, 105).

California *v.* Cent. Pac. R.R. Co., 127 U. S. 1.

IV.

The Tax Upon the Capital Stock of the Plaintiff in Error is Unconstitutional and Void.

1. By the law of Illinois it is provided that "the capital stock of all companies and associations now or hereafter created under the laws of this State shall be so valued by the State board of equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association."

Act of March 30, 1872.

State Railroad Tax Cases, 92 U. S. 603.

A tax upon the valuation of the capital stock of a corporation is necessarily a tax upon its property and assets, including its franchises, and especially its business. Perhaps the most important element in such valuation is the business and profits resulting therefrom.

Gloucester Ferry Co. *v.* Penn., 114 U. S. 196.

Bank Tax Cases, 2 Wall. 200.

State Railroad Tax Cases, 92 U. S. 575.

Pullman's Palace Car Co. *v.* Central Trans. Co., 171 U. S. 138.

Com. *v.* Standard Oil Co., 101 Pa. St. 119, 145.

In the present case it is apparent, as matter of fact, that the assessed value of the capital stock was based exclusively upon the business carried on. The shares were worthless, there was no personal property, and nothing remained but the business (R. 138, 139).

It is submitted that the business thus taxed was interstate commerce. If so, it is evident that it was beyond the taxing power of the State. Such a business is not carried on by the permission of the State, and is not subject to its regulation or control. The State cannot enact a license to carry it on,[1] nor can it tax the subjects of such business,[2] nor the instruments whereby it is carried on,[3] nor the gross outcome[4] of it, nor "retard, impede, burden, or in any manner control" its prosecution.

McCulloch *v.* Maryland, 4 Wheat. 316, 436.

[1] Moran *v.* New Orleans, 112 U. S. 69.

[1] Leloup *v.* Port of Mobile, 127 U. S. 640.

[2] Brown *v.* Maryland, 12 Wheat. 419.

[3] Gloucester Ferry Co. *v.* Penn., 114 U. S. 196.

[3] Covington Bridge Co. *v.* Kentucky, 154 U. S. 204.

[4] Phila. Steamship Co. *v.* Penn., 122 U. S. 326.

What is the business of the plaintiff in error? It is a consolidated corporation consisting of two companies, one incorporated by the State of Iowa and the other by the State of Illinois, and empowered by act of Congress to construct and maintain a bridge over the Mississippi, a navigable river, and to receive tolls for the transportation of persons and property from one shore to the other. In pursuance of such power it built the bridge in 1871, and has since been engaged in the business of transportation. The question presented to this court is whether, being engaged in such business, the bridge company is as to its business subject to taxation by the State of

Illinois. That it is not is settled by the adjudications of this court.

Gloucester Ferry Co. *v.* Penn., 114 U. S. 196, was the case of a corporation incorporated by the State of New Jersey and authorized to transport across the Delaware river persons and property to Philadelphia, in the State of Pennsylvania, by means of ferry-boats.

The State of Pennsylvania, in which the corporation had no property subject to taxation by it, imposed a tax upon the capital stock of the company, which necessarily fell upon the ferry-boats and business. This court held that the business carried on was interstate commerce, and the boats instruments for carrying on such business and hence the tax was unconstitutional and void.

In Covington Bridge Co. *v.* Kentucky, 154 U. S. 204, there was a bridge over the Ohio river between Cincinnati, Ohio, and Covington, Kentucky, used, as here, for the transportation of persons and property from shore to shore. The State of Kentucky passed a law fixing the rate of toll to be charged by the owner of the bridge for transportation. This court held the law was unconstitutional and void because the business carried on was interstate and the bridge was an instrument of interstate commerce. Mr. Justice Brown, delivering the opinion of the court, said:

"With reference to the *second* question, an attempt is made to distinguish a bridge from a ferry-boat, and to argue that while the latter is an instrument of interstate commerce the former is not. Both are, however, vehicles of such commerce, and the fact that one is movable and the other is a fixture makes no difference in the application of the rule. Commerce was defined in *Gibbons* v. *Ogden*, 9 Wheat. 1, 189, to be 'intercourse,' and the thousands of people who daily pass and repass over this bridge

may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool. While the bridge company is not itself a common carrier, it affords a highway for such carriage, and a toll upon such bridge is as much a tax upon commerce as a toll upon a turnpike is a tax upon the traffic of such turnpike, or the charges upon a ferry a tax upon the commerce across a river. A tax laid upon those who do the business of common carriers upon a certain bridge is as much a tax upon the commerce of that bridge as if the owner of the bridge were himself a common carrier."

The above cases would appear to determine the one now under consideration.

2. It may be said that the tax is not specifically upon the business carried on but generally upon the valuation of the capital stock. The answer is plain. The valuation of such stock necessarily includes the business, and, indeed, the latter is the chief element entering into such valuation.

The settled doctrine of this court is that when the tax is entire and laid on different elements of property as a unit, if any one of the elements is illegally taxed the whole tax is bad.

In Santa Clara County *v.* South. Pac. R.R. Co., this court, Mr. Justice Harlan delivering the opinion, said:

"The case as presented to the court below was, therefore, one in which the plaintiff sought judgment for the entire tax arising upon assessment of different kinds of property as a unit—such assessment including property not legally assessable by the State board, and the part of the tax assessed against the latter property not being separable from the other part. Upon such an issue the law, we think, is for the defendant; an assessment of that kind is invalid and will not support an action for the recovery of the entire tax so levied. Cooley on Tax-

ation, 295–6, and authorities there cited; Libby *v.* Burnham, 15 Mass. 144, 147; State, Randolph, &c., *v.* City of Plainfield, 38 N. J. Law (9 Vroom) 93; Gamble *v.* Witty, 55 Mississippi, 26, 35; Stone *v.* Bean, 15 Gray, 42, 45; Moshier *v.* Robie, 11 Maine (2 Fairfield), 137; Johnson *v.* Colburn, 36 Vt. 695; Wills *v.* Burbank, 17 N. H. 393, 412."

Santa Clara County *v.* South. Pac. R.R. Co., 118 U. S. 394, 416.

In California *v.* Pacific R.R. Co., Mr. Justice Bradley, delivering the opinion of the court, says:

"The last section shows explicitly that, in regard to a railroad, the State board has power to assess only five things, the franchise, roadway, road-bed, rails, and rolling-stock; the county boards are authorized to assess all the rest of the property. If the State board includes in its assessment any more of the railroad property than it is authorized to do, the assessment will be *pro tanto* illegal and void. If the unlawful part can be separated from that which is lawful, the former may be declared void, and the latter may stand; but if the different parts, lawful and unlawful, are blended together in one indivisible assessment, it makes the entire assessment illegal. This is so well settled that it needs no citation of authorities farther than to refer to the opinion of this court in the former cases (118 U. S.) In the present assessments, all parts of the property are blended together and are inseparable. If it be true, therefore, that property not authorized to be included in the assessments is included therein, the assessments must be declared void."

California *v.* Pac. R.R. Co., 127 U. S. 129.

In Gloucester Ferry Co. *v.* Pennsylvania, *supra*, the tax was assessed generally upon the capital stock.

The evidence leaves no doubt that the valuation of the capital stock in fact included the business carried on.

3. It may further be objected that the business was not interstate because the plaintiff in error did not itself transport persons and property from shore to shore but only supplied a bridge whereby such transportation was made by those who used it. Of course, it is not denied that a party engaged in the business of supplying an instrument afterwards used in interstate business, as a ship or railway, can not be said to be engaged in such business. He merely supplies an instrument by sale or hire which another embarks in interstate business. Such instrument or its use has become the property of the vendee or hiree, and the fact that he, as owner, uses it in interstate business cannot make the vendor or hirer a party engaged in such business. And so it would be if the instrument were sold or hired for the express purpose of being so used. In neither case does the vendor or hirer become a participant in the interstate business.

The above illustrations and others that might be put lose sight of the essential fact that in the present case the vendor or hirer of the instrument and those who use it are engaged in a common object, which is simply to get the persons or property from one shore to the other, or, in other words, transportation ; to accomplish this both contribute. The owner of the bridge supplies a firm foundation where without the bridge there would be water, and the wayfarer supplies his legs, and the carrier of merchandise, vehicles and motive power. But the legs of the wayfarer would never alone carry him across, nor would the vehicle of the carrier land the merchandise on the farther shore. The case is simply where the contributions of several actors unite in the accomplishment of a common object. It is true *it* is passive ; it does not supply in a certain sense ; it does not move the body of the wayfarer nor the vehicle of the carrier ; but it does more : it supplies the

means whereby the above forces can be exerted, and it continues such supply in the whole passage from one end of the bridge to the other. All the way it is co-operating with those forces until the common object is attained; that is, until the opposite shore is reached. It had as well be said that in the mechanical process of lifting an object the work is not done in any degree by the fulcrum but only by the lever. It avails nothing to say that the interstate business is done by passengers and carriers of merchandise. That may be and probably is so, but it does not follow that such business is not also done by the participation of the other agent, the bridge, without which participation the business could not be done. Every contract made by the bridge company, express or implied by law, is a continuing contract, made in one State and to be performed partly in it and partly in another State. The contract and the legal liability are always to land safely on the other shore. A remarkable feature of the present case is that the manifest purpose of the construction of the bridge was interstate commerce as defined by Chief Justice Marshall in Gibbons *v.* Ogden, 9 Wheat. 190-194, and that in the nature of things it is used, and can be used solely, for that object. It is not always that an alleged instrument of commerce is necessarily bound up with such commerce and has no faculties beyond. A ship may or may not be an instrument of commerce, depending on its use in interstate or foreign commerce, but this bridge from its locality must be such instrument and nothing else. It may be said it is not a carrier in the technical sense of that term. Even assuming this, it is none the less embraced within the constitutional provisions.

It is noticeable that the present case is not that of a turnpike or other way, the use of which may be turned

over to another without further responsibility than to keep it fit for traffic. On the contrary, as the evidence shows, there is a draw on the Iowa side involving, of necessity, important services on the part of the company in the transportation of passengers and freights as well as in assisting in the navigation of the river by vessels.

The case of Henderson Bridge Company *v.* Kentucky, 166 U. S. 150, will probably be relied on in behalf of the defendant in error, but that case was distinguished by the court from Covington Bridge Company *v.* Kentucky, 154 U. S. 204, and the latter case, holding a bridge to be an instrument of commerce, was not overruled. What is carrying on the business of transportation between State and State is a matter of fact, and in the former case it was found by this court as a fact that the Henderson Bridge Company did not itself carry on such business, but merely hired the use of its bridge to parties who used it for that purpose. In the present case the Bridge Company was itself engaged in the business of transporting persons and property from shore to shore, and that surely is interstate commerce.

In the Henderson Bridge Company's case the acts of Congress referred to conferred no right or franchise on the company to erect the bridge or collect tolls for its use. They merely regulated the height of bridges over that river (the Ohio) and the width of their spans in order that they might not interfere with its navigation. (See opinion, p. 154.)

Far different is the present case, for the act of Congress expressly confers the right or franchise to build the bridge, and to charge a reasonable compensation by way of toll. See act, sec. 1. It thus appears that Congress has made such regulation of commerce as it deemed right, and by

that regulation the owner of the bridge is empowered to fix the compensation, subject only to the restriction that it shall be reasonable. It is not competent for the State of Illinois to add to such regulation and impose by way of tax a greater burden than that provided by Congress.

Covington and Cincinnati Bridge Co. *v.* Kentucky, *supra*.

V.

The tax on the capital stock denies to the plaintiff in error the equal protection of the laws.

The tax is upon extra-territorial real estate that is the part of the bridge confessedly in the State of Iowa. It also embraces the franchise granted by that State as well as the franchise granted by the act of Congress.

The two corporations derived the franchise to construct and maintain the bridge and charge reasonable compensation from the Federal Government. A State cannot tax such a franchise although it may tax the property of a Federal corporation.

California *v.* Central Pac. R.R. Co., 127 U. S. 1, 40, 41.

Tel. Co. *v.* Texas, 105 U. S. 460.

Santa Clara County *v.* South Pac. R.R. Co., 118 U. S. 394.

Respectfully submitted, W. D. Davidge & W. D. Davidge
~~DAVIDGE & DAVIDGE,~~

Attorneys for Plaintiff in Error.

APPENDIX.

CHAP. CCXLVI. *An Act to authorize the Construction of Certain Bridges, and to establish them as Post Roads.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose, to build a bridge across the Mississippi river at Quincy, Illinois, and to lay on and over said bridge railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, the cause may be tried before the District Court of the United States of any State in which any portion of said obstruction or bridge touches.

SEC. 2. *And be it further enacted*, That any bridge built under the provisions of this act may, at the option of the company building the same, be built as a draw-bridge, with a pivot or other form of draw, or with unbroken or continuous spans: *Provided*, That if the said bridge shall be made with unbroken and continuous spans, it shall not be of less elevation in

any case than fifty feet above extreme high-water mark, as understood at the point of location, to the bottom chord of the bridge, nor shall the spans of said bridge be less than two hundred and fifty feet in length, and the piers of said bridge shall be parallel with the current of the river, and the main span shall be over the main channel of the river and not less than three hundred feet in length: *And provided also*, That if any bridge built under this act shall be constructed as a draw-bridge, the same shall be constructed as a pivot draw-bridge with a draw over the main channel of the river at an accessible and navigable point, and with spans of not less than one hundred and sixty feet in length in the clear on each side of the central or pivot pier of the draw, and the next adjoining spans to the draw shall not be less than two hundred and fifty feet; and said spans shall not be less than thirty feet above low-water mark, and not less than ten above extreme high-water mark, measuring to the bottom chord of the bridge, and the piers of said bridge shall be parallel with the current of the river: *And provided also*, That said draw shall be opened promptly upon reasonable signal for the passage of boats whose construction shall not be such as to admit of their passage under the permanent spans of said bridge, except when trains are passing over the same; but in no case shall unnecessary delay occur in opening the said draw during or after the passage of trains.

SEC. 3. *And be it further enacted*, That any bridge constructed under this act and according to its limitations, shall be a lawful structure, and shall be recognized and known as a post route; upon which, also, no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States, than the rate per mile paid for their trans-

portation over the railroads or public highways leading to the said bridge.

SEC. 4. *And be it further enacted*, That it shall be lawful for the Chicago, Burlington and Quincy Railroad Company, a corporation whose road has been completed to the Mississippi river, and connects with a railroad on the opposite side thereof, having first obtained authority therefor from the States of Illinois and Iowa, to construct a railroad bridge across said river, upon the same terms, in the same manner, under the same restrictions, and with the same privileges, as is provided for in this act in relation to the bridge at Quincy, Illinois.

SEC. 5. *And be it further enacted*, That a bridge may be constructed at the town of Hannibal, in the State of Missouri, across the Mississippi river, so as to connect the Hannibal and Saint Joseph Railroad with the Pike County and Great Western Railroads of Illinois, on the same terms and subject to the same restrictions as contained in this act for the construction of the bridge at Quincy, Illinois.

SEC. 6. *And be it further enacted*, That a bridge may be constructed across the Mississippi river between Prairie du Chien, in the State of Wisconsin, and North McGregor, in the State of Iowa, with the consent of the legislatures of Wisconsin and Iowa, on the same terms and subject to the same restrictions as are contained in this act for the construction of the bridge at Quincy, Illinois.

SEC. 7. *And be it further enacted*, That the Keokuk and Hamilton, Mississippi, Bridge Company, a corporation existing under the laws of the State of Iowa, and the Hancock County Bridge Company, a corporation existing under the laws of the State of Illinois, be and are hereby authorized to construct and maintain a bridge over the Mississippi river between Keokuk, Iowa, and Hamilton, Illi-

nois, of the same character, description, and construction as provided in this act for the bridges at Quincy and Burlington; and the said bridge, in its use and operation, shall be subject to the same restrictions that apply to said bridges at Quincy and Burlington by the terms of this act.

SEC. 8. *And be it further enacted*, That the Winona and Saint Peter Railroad Company, a corporation existing under the laws of the State of Minnesota, is hereby authorized to construct and operate a railroad bridge across the Mississippi river between the city of Winona, in the State of Minnesota, and the opposite bank of the said river, in the State of Wisconsin, with the consent of the legislatures of the States of Minnesota and Wisconsin; and said bridge by this section authorized is hereby declared a post route, and subject to all the terms, restrictions, and requirements contained in the foregoing sections of this act.

SEC. 9. *And be it further enacted*, That a bridge may be constructed and maintained across the Mississippi river, between Dunleith, in the State of Illinois, and Dubuque, in the State of Iowa, with the consent of the said States previously given or hereafter acquired, with the same privileges, upon the same terms, and under the same restrictions as are contained in this act for the construction of a bridge at Quincy, Illinois.

SEC. 10. *And be it further enacted*, That any company authorized by the legislature of Missouri may construct a bridge across the Mississippi river, at the city of Kansas, upon the same terms and conditions provided for in this act.

SEC. 11. *And be it further enacted*, That the "Saint Louis and Illinois Bridge Company," a corporation organized under an act of the general assembly of the State of Missouri, approved February fifth, eighteen hundred and

sixty-four, and an act amendatory of the same, approved February twentieth, eighteen hundred and sixty-five, and also confirmed in its corporate powers under an act of the legislature of the State of Illinois, approved eighteen hundred and sixty-four, or any other bridge company organized under the laws of Missouri and Illinois, be, and the same is hereby, empowered to erect, maintain, and operate a bridge across the Mississippi river, between the city of Saint Louis, in the State of Missouri, and the city of East Saint Louis, in the State of Illinois, subject to all the conditions contained in said act of incorporation and amendments thereto, and not inconsistent with the following terms and provisions contained in this act. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said waters, the cause may be tried before the District Court of the United States of any State in which any portion of said obstruction or bridge touches.

SEC. 12. *And be it further enacted*, That the bridge authorized by the preceding section to be built shall not be a suspension bridge, or draw-bridge, with pivot or other form of draw, but shall be constructed with continuous or unbroken spans, and subject to these conditions: First, that the lowest part of the bridge or bottom chord shall not be less than fifty feet above the city directrix at its greatest span. Second, that it shall have at least one span five hundred feet in the clear, or two spans of three hundred and fifty feet in the clear of abutments. If the two latter spans be used, the one over the main steamboat channel shall be fifty feet above the city directrix, measured to the lowest part of the bridge at the centre of the span. Third, no span over the water, at low-water mark, shall be less than two hundred feet in the clear of abutments.

SEC. 13. *And be it further enacted*, That the right to alter or amend this act, so as to prevent or remove all material obstructions to the navigation of said river by the construction of bridges, is hereby expressly reserved.

Approved July 25, 1866.

Rev. Stat. Ill. 1893, Hurd, Chap. 120, § 3.

"Fourth. The capital stock of all companies and associations now or hereafter created under the laws of this State except those required to be assessed by the local assessors, as hereinafter provided, shall be so valued by the State board of equalization as to ascertain and determine respectively the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association; such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as it may deem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration, or amendment as may be found from time to time to be necessary by said board: *Provided*, That in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock, or shares of capital stock of banks organized under the general banking laws of the State, or under any special charter heretofore granted by the legislature of this State: *Provided further*, That companies and associations organized for purely manufacturing purposes, or for the mining and sale of coal, or for printing, or for publishing of newspapers, or for the improving and breeding of stock, shall be assessed by the local assessors in like manner as the property of individuals is required to be assessed."

§ 8.

"The State board of equalization shall assess the capital stock of each company or association, respectively, now or hereafter incorporated under the laws of this State, in the manner hereinbefore in this act provided. The respective assessments so made (other than of the capital stock of railroad and telegraph companies) shall be certified by the auditor, under direction of said board, to the county clerk of the respective counties in which such companies or associations are located, and said clerk shall extend the taxes for all purposes on the respective amounts so certified the same as may be levied on the other property in such towns, districts, villages or cities in which such companies or associations are located."

THE KEOKUK AND HAMILTON BRIDGE COMPANY,
Plaintiff in Error,
v.
THE PEOPLE OF THE STATE OF ILLINOIS.

No. 176.

BRIEF OF PLAINTIFF IN ERROR IN REPLY.

W. D. DAVIDGE AND
W. D. DAVIDGE, Jr.,
Attorneys for Plaintiff in Error.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1899.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

THE KEOKUK AND HAMILTON BRIDGE COMPANY,
PLAINTIFF IN ERROR,
v.
THE PEOPLE OF THE STATE OF ILLINOIS.
No. 175.

BRIEF OF PLAINTIFF IN ERROR IN REPLY.

I.

The brief of the defendants in error asserts that the Bridge Company, the plaintiff in error, claims that the dividing line between Illinois and Iowa is the middle of the Mississippi river, measuring from shore to shore.

No such claim is made. On the contrary, the claim is that the dividing line between the States as adjudicated by this court is the "middle of the main navigable channel" of the river.

Iowa *v.* Illinois, 147 U. S. 13.

It is further claimed that in pursuance of the order of this court the said line was ascertained and designated on the bridge in question by the commissioners appointed by this court upon the suggestion and stipulation of both States.

To make perfectly plain the contention of the company it is necessary, first, to understand the assessment. The assessment-book, given in evidence by the State, shows, pages 38 to 40 (R. 24), that the approach to the bridge and part of the bridge were assessed together. After describing by courses and distances the approach, the east end of the bridge is reached and the assessment proceeds: "and thence continuing the same course along the center line of said bridge 1,565 feet to the State line between the States of Illinois and Iowa" (R. 24).

It is thus apparent, and, indeed, is conceded, that Illinois taxed 1,565 feet of the bridge from the east end thereof.

The contention is that about 600 feet of the bridge so taxed were situated beyond the limits of Illinois and in Iowa.

The suit in this court between the States was given in evidence (R. 147–175).

The order of this court appointing commissioners to carry into effect its decree required them (R. 168) "to locate and mark the State line between the States of Iowa and Illinois, pursuant to the opinion of this court in this cause, at each of the nine bridges across the Mississippi river between these States, and inasmuch as there is an emergency existing therefor, it is ordered that said commissioners proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge and report at once their action in that regard before proceeding to ascertain the line or mark the same at the other bridges. . . ."

The report of the commissioners, with an accompanying plat, was filed in this court March 30, 1893 (R. 171).

The line as designated and marked on the bridge, as shown by the plat, is a few feet east of the sixth pier, counting from the east end. The length of the spans from centre to centre of piers is given on the plat, and the distance of the line as marked on the bridge to the east end of the bridge is thus shown to be about 999 feet 4 inches, measuring to the centre of the sixth pier. It is a little less, say thirty or forty feet, because the line as marked is a little east of the sixth pier (see plat, R. 171). Now the assessment is for 1,565 feet of the bridge from the east end.

It is thus demonstrated that of the part of the bridge taxed, about six hundred feet are in the State of Iowa. This tax, we submit, is invalid as to the part of the bridge in Iowa, and the tax being a unit and void in part is void *in toto*.

Santa Clara Co. *v.* South. Pacific Railroad, 118 U. S. 394.

Philadelphia Fire Association *v.* New York, 119 U. S. 110.

Not only is the tax void for extraterritoriality, which affects the whole tax, but it is also void for the reason that it denies equal taxation to the company, first, by taxing its real estate beyond the limits of Illinois, and, secondly, as to the bridge both within and without those limits, by taxing the company three or four times as much as other owners of real estate. No other owner of real estate beyond the limits of the State is taxed therefor, and no other owner of real estate within the limits is assessed for more than one-fourth or one-third the value thereof. This happened in one of two ways. Either the

bridge was designedly and hence fraudulently assessed at a gross over-valuation, or the bridge, an instrument of commerce, was assessed not as property only, but also on account of its earning capacity as such instrument engaged in interstate business.

Such is the contention of the company. The federal questions are extraterritorial taxation in violation of the line as established by the enabling act of Congress of April 18, 1818, under which Illinois was admitted as a State, and inequality of taxation as shown by extraterritorial taxation and the valuation of the bridge at three or four times the property of other owners (R. 2, 3, 4, 9–16, 61–71). It may be said that the proposition that the dividing line between the States was conceded and indeed asserted by the court below to be the middle of the main channel of the river, and hence that the error of that court was one of fact only, that is, the application of a conceded rule to the subject-matter. In answer, we submit that the right of the company was to have "the title, right, privilege, or exemption" claimed not only admitted theoretically, but *enforced*, and that upon failure a writ of error lay from this court. The claim had as well not be conceded at all as conceded and then nullified by the action of the court. The trial of law and fact was by the court. The line as marked on the bridge was sustained by the report and plat of the commissioners returned to this court, and by the oral evidence of the commissioners, and other witnesses. Against the line so established was the evidence of witnesses who never sounded the river and who testified to what was a steamboat channel communicating with the United States canal on the Iowa side (R. 37, 41, 47, 49, 51, 54, 56). To deny the claim of the company the court had to overrule its own prior judgment between the same parties in 145 Illinois, 596, on the identical point (R. 198), and even held that

the commissioners in fixing the line measured from shore to shore and not from side to side of the main channel (R. 198, 199). This holding has no support in the evidence but is contradicted by the report, the plat, and the evidence of the commissioners. One of them, Meigs, swears that had they measured from shore to shore the line would have been *east* of the designated point on the bridge (R. 133, 134). It is evident that the evidence in behalf of the State was a clever device by local officers to defeat the action of the officers of this court. The report, it is submitted, fixed the line subject to the action of this court. The order of confirmation was struck out on motion of the State of Illinois (151 U. S. 238) and the report of commissioners appointed at the instance of both States has lain in this court for nearly six years without any opposition to confirmation on its merits. Such a report is convincing evidence and not lightly to be set aside as was done by the court below. An individual in the position of the State of Illinois could not be said to occupy enviable ground from a moral standpoint.

II.

The tax on the capital stock.

(*a*) The tax is upon the valuation of the capital stock made by the board of equalization. It is necessarily upon the property and assets, franchises and business of the company.

It is reached by making a valuation of all the corporate property of whatsoever kind, tangible and intangible, and then deducting the assessed value of the tangible property. The balance is the valuation of the capital stock (R. 147).

In the present case the whole bridge is taxed, the part

in Illinois as tangible property and the part in Iowa as capital stock. This is conceded and sought to be justified by the opposing brief. From the aggregate valuation of the corporate property the assessed value of the east approach and of the 1,565 feet of the bridge are deducted, but the west approach and the residue of the bridge in Iowa are not deducted, and hence taxed as capital stock. Thus the State of Illinois taxes real estate confessedly beyond her jurisdiction. If the question were new it might well be argued that the law of Illinois properly construed does not attempt to do this, but the decisions of the Supreme Court of the State relied on must, we admit, be accepted as showing the meaning of the State law.

Then is such a tax valid? May the State of Illinois tax real estate beyond her jurisdiction? In State Tax on Foreign-held Bonds, this court held: "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business."

State Tax on Foreign-held Bonds, 15 Wall. 300, 319.

The right to tax the real estate in Iowa is in argument based on the fact that the first charter was granted by Illinois with power to consolidate, and that upon such consolidation with the corporation chartered by Iowa the real estate of the latter corporation in Iowa was, by some process not explained, brought within the jurisdiction of Illinois, although in fact it continued to be in Iowa, and although Illinois afforded and could afford no protection, the correlative of taxation, and although the theory necessarily involved double taxation.

The translation of the property from one State to the

other is attributed to the consolidation. But the articles of consolidation are not in evidence, neither is the charter of the company set out in the opposing brief. All we know is that there was a consolidation, and that thereafter the "location" of the company was Keokuk, in the State of Iowa.

It is submitted that the consolidation of corporations chartered by the different States did not have the effect claimed. The invalidity of the tax, so far as based on the Iowa real estate, would invalidate the whole tax.

(*b*) But the tax is not only void as a tax on the real estate in Iowa. It is also void as a charge on interstate commerce, and on franchises granted by the Federal Government.

Perhaps the main element entering into the valuation of capital stock is the business carried on.

The business here was interstate business—the transportation of persons and property from one State to the other.

Such a business is beyond State taxation. In the case of Henderson Bridge Co. *v.* Kentucky, it was held under the circumstances that the bridge was not an instrument of commerce.

Henderson Bridge Co. *v.* Kentucky, 166 U. S. 150.

In the present case the evidence shows that the only business carried on or that could be carried on was interstate. The bridge had and could have no other function.

Any doubt on this point is removed by the act of Congress of July 25, 1866, a copy of which is filed with our principal brief. This act shows that after the grant of the charter by Illinois and that by Iowa, the two companies were authorized by Congress to construct and maintain

the bridge, subject to the terms and restrictions mentioned. (See §§ 7 and 1, 2, 3.)

Thus the franchises of the company are not only derived from Illinois and Iowa, as assumed in the opposing brief, but also from the Federal Government. It is only necessary to read the act to be convinced that the bridge was intended to be an instrument of commerce, and, indeed, made such both in respect of transportation and as a commercial agency in navigation.

Pensacola Tel. Co. *v.* Western U. Tel. Co., 96 U. S. 1.

The act of Congress in the Henderson Bridge case, held to confer "no right or franchise on the company to erect the bridge or collect tolls for its use," was very different, being confined to making the bridge a post route.

Henderson Bridge Co. *v.* Kentucky, 166 U. S. 150, 154.

(*c*) The tax was on the franchises granted by Congress. Cases cited on page 19 of our principal brief.

III. The opposing brief, page 32 *et seq.*, takes the ground that there is no evidence to show consolidation or the terms thereof, and, indeed, that the company cannot set up the same as it was not mentioned in the return to the county clerk.

If there was no consolidation there is an end of the alleged right of the State of Illinois to tax the real estate in Iowa, the predicate of which right as held by the Illinois cases relied on is consolidation.

In the absence of consolidation, the exercise of the alleged right would only be more flagrant.

It is further contended that the company having in its return to the county clerk declared its capital was $1,000,000, authorized and paid up, is equitably estopped from showing that the valuation for a less amount is

illegal. But the company did no such thing. In compliance with law, it declared that $1,000,000, the authorized capital stock, had been paid up and all the shares issued (R. 138, 189). It further declared that the shares of stock had no market and no actual value. Now the duty of the board was to determine "the fair cash value of the capital stock, including the franchise." This plainly meant the value at the time of the assessment by the board; in other words, the present value.

The rule of the board was that if capital stock had a cash value as quoted by reliable commercial authority, such value was to govern the valuation. If, as here, there was no such value, the board was to be governed by the return and other information outside the return (R. 144, 145).

Respectfully submitted.

W. D. DAVIDGE AND
W. D. DAVIDGE, JR.,
Attorneys for Plaintiff in Error.

No. 26.

FILED
NOV 25 1899
JAMES H. MCKENNEY
Clerk

Br. of Davidge & Davidge for Pl'ff in Err.

Filed Dec. 15, 1899.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 26.

THE KEOKUK AND HAMILTON BRIDGE COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

BRIEF OF PLAINTIFF IN ERROR ON REARGUMENT.

W. D. DAVIDGE AND
W. D. DAVIDGE, JR.,
Attorneys for Plaintiff in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10-31-'99

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 26.

THE KEOKUK AND HAMILTON BRIDGE COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

Brief of Plaintiff in Error on Reargument.

STATEMENT OF THE CASE.

The plaintiff in error, a corporation formed by the consolidation of the Keokuk and Hamilton, Mississippi, Bridge Company, a corporation of Iowa, and the Hancock County Bridge Company, a corporation of Illinois, mentioned in the act of Congress of 25th July, 1866, a copy of which is herewith filed, owns and maintains a bridge across the Mississippi river between Keokuk, in Iowa, and Hamilton, in Illinois, and has its main office at Keokuk (R., 1, 2, 3, 17, 175, 176). The bridge is used entirely for commerce between the States of Iowa and Illinois, two

railroads, wagons, and passengers crossing from State to State, and is provided with a draw in aid of navigation. The business of the plaintiff in error consists in the maintenance of the bridge and its works by the management of the draw and the transportation of persons and property for hire from shore to shore (R., 82, 84, 85, 99, 106, 136, 137). This business is carried on by the authority of the above act of Congress.

The manifest purpose of this act is to regulate commerce upon a great navigable highway and between the States. The scheme of the act is far-reaching. It provides for the construction of nine bridges across the river, three between Illinois and Missouri, three between Illinois and Iowa, one between Wisconsin and Iowa, one between Wisconsin and Minnesota, and one at Kansas City. (See Act, §§ 1, 4, 5, 6, 7, 8, 9, 10, 11, in the appendix of this brief.)

The third section of the act declares that any bridge constructed under it shall be a lawful structure and shall be recognized and known as a post-route, upon which no higher charge shall be made for the transmission of the mails, troops, and munitions of war of the United States than the rate per mile paid for transportation on the railroads or public highways leading to the bridge. The first section, relating specially to the bridge at Quincy, Illinois, but applied by subsequent sections to all the other bridges, requires the party building the bridge to lay down railway tracks for the more perfect connection of "any railroads that are or *shall be constructed* to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge under the conditions and limitations hereinafter provided."

By the same section in case of litigation arising from any obstruction or alleged obstruction to the free navigation of the

river, jurisdiction is given to any district court of the United States in any State where the bridge or obstruction touches.

The second section relates to the manner in which the bridge shall be constructed. It provides that any bridge may, at the option of the builder, be built as a drawbridge, with a pivot or other form of draw or with unbroken and continuous spans. If the latter, the elevation of the bottom chord of the bridge shall be at least 50 feet above extreme high-water mark, at the point of location, and the spans shall not be less than 250 feet in length, and the piers shall be parallel with the current of the river, and the main span shall be over the channel and not less than 300 feet in length. If, on the other hand, the bridge shall be a drawbridge, it shall be a pivot drawbridge, with a draw over the main channel at an accessible and navigable point, and with spans of not less than 160 feet in length in the clear on each side of the central or pivot pier of the draw, and the next adjoining spans to the draw shall not be less than 250 feet, and said spans shall not be less than 30 feet above low-water mark nor less than 10 feet above extreme high-water mark, measuring to the bottom chord of the bridge, and the piers shall be parallel with the current of the river. The draw shall be opened promptly upon reasonable signal for the passage of boats whose construction does not admit of passage under the permanent spans except when trains are passing over the bridge, and in no case shall there be unnecessary delay in opening the draw during or after the passage of trains.

It is the seventh section, however, that grants to the two corporations which consolidated and thereby formed the plaintiff in error the power to build the bridge for taxes upon which this suit was brought. That section, in substance the same as the grants of power for other bridges, is as follows:

SEC. 7. *And be it further enacted*, "That the Keokuk and Hamilton, Mississippi, Bridge Company, a corporation ex-

isting under the laws of the State of Iowa, and the Hancock County Bridge Company, a corporation existing under the laws of the State of Illinois, be and are hereby authorized to *construct* and *maintain* a bridge over the Mississippi river between Keokuk, Iowa, and Hamilton, Illinois, of the same *character*, *description*, and *construction* as provided in this act for the bridges at Quincy and Burlington; and the said bridge, in *its use* and *operation*, shall be subject to the same restrictions that apply to said bridges at Quincy and Burlington by the terms of this act."

To summarize:

The Congress of the United States, having exclusive jurisdiction over the subject of commerce upon navigable waters and between the States, in the exercise of its authority deemed it proper that the different bridges mentioned in the act should be built and maintained. To that end it passed the above act, which on its face is a regulation of commerce. It declares that bridges shall be built and how many and where located, and confers upon the Federal courts jurisdiction of all litigation growing out of any obstruction or alleged obstruction of free navigation. It does not stop here, but prescribes the manner in which the bridges shall be built—that is, if of continuous spans, the width of the spans, and the height of the bridge, and the position of the piers, and if a drawbridge, the character and location of the draw, and the width and height of the spans, and the position of the piers.

Moreover, all the bridges are to be equipped with railway tracks for the more perfect connection of all railroads constructed or to be constructed to the river, over which tracks all trains shall be allowed to cross for reasonable compensation to be made to the owners of the bridges.

If the bridge is a drawbridge the further duty is devolved upon the owner to open the draw for the passage of boats without delay save that caused by the passage of trains. The right to reasonable compensation not expressed would neces-

sarily follow as an incident to the right to maintain the bridges given by the act.

The bridges are declared post-routes, and the cost of the transportation of mails, troops, and munitions of war over them is regulated.

By the thirteenth section of the act the right is reserved to alter or amend it so as to prevent or remove any material obstruction to navigation.

From what has been said it must be apparent that the bridges authorized by the act are the means provided by the sovereign authority to carry into effect its policy in respect of the navigation of the river and interstate commerce. Indeed, the act after acceptance became a contract whereby the Government said to the different builders of the bridges, If you will construct in pursuance of the act, you shall be allowed to maintain, charging therefor reasonable compensation, and subject only to the reserved power of alteration and amendment for the cause specified. Thus the existence and maintenance of the bridges are governmental operations, and the bridges the instruments for carrying on such operations, and neither such operations nor instruments are, it is submitted, subject to taxation by a State.

It is to be observed that while the two predecessors of the plaintiff in error were corporations existing under the laws of Iowa and Illinois, as mentioned in the seventh section of the act, the bridge was in fact constructed under and in pursuance of the authority of the act of Congress and subject to its restrictions and provisions. Hence the present case is not one of mere permissive use of navigable waters with the assent of the Federal Government, but of the exercise of new and independent authority on its part and with conditions, restrictions, and limitations prescribed by it. It is, in fact, as if a new charter had been granted by the Government.

After the passage of the above act the two companies con-

solidated. In 1871 the bridge was constructed by the plaintiff in error, with a draw, and has been since used and maintained.

An important element in the case is the boundary line between the States of Iowa and Illinois. The contention of the plaintiff in error is that more than 600 feet of the bridge situated in Iowa are taxed by the defendant in error.

By the treaty of peace concluded in 1763 by Great Britain, France, and Spain the boundary between the English and French territories was fixed as "a line drawn along the middle of the River Mississippi from its source to the River Iberville," in Louisiana.

Subsequently, by the treaty of Paris, in 1783, Great Britain ceded to the United States all possessions east of a "line drawn along the middle of the Mississippi river."

3 Jenkenson's Collection of Treaties, p. 410.

And still later, in 1803, France ceded to the United States all her territory west of said line.

8 Stat., 200.

The act of Congress enabling the people of Illinois to form a State constitution defines the boundaries of the State as follows: Starting in the middle of Lake Michigan, at north latitude forty-two degrees and thirty minutes, "thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river."

3 Stat., 428.

And the subsequent constitutions of Illinois of 1818, 1848, and 1870 defined the western boundary in the same way.

Ill. Rev. Stat., 1893, Hurd.

The enabling act of Missouri made the eastern boundary of that State the same line.

3 Stat., 545.

The courts of the States bordering on the Mississippi have frequently passed on this question and have fixed the boundary at the middle of the river.

Dunlieth & Dubuque Bridge Co. *vs.* County of Dubuque, 55 Iowa, 558.

Morgan *vs.* Reading, 3 Sm. & Mar. (Miss.), 366.

And this court has held the same.

Missouri *vs.* Kentucky, 11 Wall., 395.

Miss. & Mo. R. R. Co. *vs.* Ward, 2 Black, 485.

St. Louis *vs.* Rutz, 138 U. S., 226.

Jones *vs.* Soulard, 21 How., 41.

The Schools *vs.* Risley, 10 Wall., 91.

And the decisions of Illinois are to the same effect.

Middleton *vs.* Pritchard, 3 Scammon, 510.

Brooklyn *vs.* Smith, 104 Ill., 429.

Trustees of Schools *vs.* Schroll, 120 Ill., 509.

And these were followed by the case of Buttenuth *vs.* St. Louis Bridge Co., in which the supreme court of Illinois, while admitting the general doctrine as above stated, sought to define the middle of the channel or the middle of the river as "the space within which ships can and usually do pass."

Buttenuth *vs.* St. Louis Bridge Co., 123 Ill., 535.

The Supreme Court of Iowa had held that not the channel, but the middle of the bed of the river was the true boundary.

Dunlieth & Dubuque Bridge Co. *vs.* Dubuque, 55 Iowa, 558.

And in 1891, in order that the boundary between the two States might be settled, the State of Iowa filed a bill against the State of Illinois in this court; to which the latter filed a cross-bill, and this court, 3d January, 1893, decreed that

the boundary line was "the middle of the main navigable channel of the Mississippi river," and appointed a commission of three competent persons, named by the court upon the suggestion of counsel, to ascertain and designate the boundary line at the nine bridges across the river, one of which was the bridge of the plaintiff in error, and report to this court (R., 147, 167).

The record in that case was given in evidence in the present case and will be found at pages 147–175 of this record. The case is reported in 147 U. S., 1.

On the 7th of March, on the request and stipulation of the attorneys general of the two States, the court appointed as commissioners Montgomery Meigs, a United States civil engineer; John R. Carpenter, a United States inspector, who had been employed in the neighborhood for twenty-five years and most of that time on the Des Moines Rapids canal, by which boats went to Keokuk at low water, and Albert Wempner, a licensed pilot of over forty years' standing, and ordered them to proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge. The commissioners then took the required oath faithfully to perform the duties of the office (R., 167, 168, 169, 131, 127, 128, 134).

On the 30th of March, 1893, the report of the commissioners was filed. The report stated that—

"after qualifying under oath, as by law provided, and after most careful consideration of the decision of your honorable body in the case above mentioned, your commissioners proceeded, as directed by you, to survey and fix the boundary line between Iowa and Illinois on the Keokuk and Hamilton bridge at Keokuk, Iowa.

"Your commissioners find that the said boundary line is situated (1,041.65) ten hundred and forty-one and sixty-five one-hundredths feet easterly of the center of the draw-span, measured along the axis of the bridge and crossing the structure in a direction parallel to the piers of the bridge.

"Your commissioners also respectfully submit the accom-

panying plat showing their measurements along the bridge and to neighboring monuments as a matter of further record" (R., 171).

On the 10th of April, 1893, the report was confirmed.

Afterwards, 4th January, 1894, on motion of the State of Illinois, the order confirming the report was, on account of some irregularity of the notice, stricken out, and since then no step has been taken in the cause. The report is still before the court awaiting confirmation (R., 172–175).

The commissioners were examined in the trial of the case at bar and they testified how they proceeded to locate the center of the navigable channel.

The bed of the river at this point is flat rock (R., 108, 112, 115, 128, 131, 132, 134). They took the water at an ordinary stage, and in the middle of the main navigable channel they placed the mark upon the bridge (R., 129, 130, 133, 134, 136). As Meigs testified:

"We first inspected the river in the vicinity of the bridge on both shores; we consulted all the maps and references available, and, as we found, we were obliged to place the boundary in the middle; this implied that the channel should have two boundaries, equal distance from the line we were to locate. In considering this question we took into account the general navigability of the river; we consulted the records, which had been kept for years at Keokuk, of the stages of the water above low water, and we first fixed upon an average stage. This we found, from about twenty years' observation, to be six feet and one-tenth above low water. We fixed the line on the west side where this met the river bed before it was disturbed by construction, and we did the same on the east side. We found that a line ten hundred and forty-one feet easterly from the center of the pivot pier was half way between these points, and we marked that as the boundary.

"If you had marked the middle of the river, measuring from shore to shore, would the boundary line have been east or west of the point you marked as the middle of the main channel?

"If we had measured from the natural banks and located the boundary line half way between, it would have been somewhat east of its present position" (R., 133, 134).

And to like effect was the testimony of Wempner:

"We proceeded to find an average stage of water, between which points we found the main navigable channel of the river, and, measuring, found the eastern boundary of the channel thus defined to the westerly boundary of the channel thus defined, divided the distance in the middle, and marked the same upon the bridge at Keokuk ten hundred and forty-one and sixty-five hundredths feet east of the draw-pier of said bridge.

"How much of the main channel that you have described would be navigable at an ordinary state of water if all artificial obstructions were removed?

"All of it" (R., 136).

Testimony of Carpenter (R. 127-131).

On the 2d of May, 1895, the collector of taxes for the county in Illinois where the town of Hamilton is situated moved for judgment against certain delinquent tax-payers, the plaintiff in error among them. The tax was on the tangible property of the company, consisting in part, as described, of "a strip of land eighty feet wide, more or less, the center line of said strip of land commencing at a point in the center of Railroad avenue, in the plat of ground known as the Keokuk and Hamilton Ferry and Manufacturing Company's addition to the city of Hamilton, in said county, 707¾ feet south 72 degrees and 40 minutes east of the center of the east end of said bridge, thence running north 72 degrees 40 minutes west to the east end of said bridge; thence continuing the same course along the center line of said bridge ~~5,165 feet to the State line~~ between the States of Illinois and Iowa, including the slopes, walls, embankments, abutments, piers, and bridge structures and improvements thereon," assessed at $79,900, and also on the capital stock, assessed at $30,080 (R., 1, 2, 21, 22, 24).

The assessment of the capital stock, $30,080, was arrived

at by taking the estimated value of the capital stock and subtracting therefrom the value of the tangible property assessed in Illinois (R., 147).

The tax on the above-mentioned tangible property was $2,708.61, and on the capital stock $1,019.17 (R., 25).

The tangible property—that is, the bridge—was assessed at more than its value, and other real property in the same county was assessed at from one-fourth to one-third of its value (R., 58, 61–71, 9–17).

The plaintiff in error objected to the rendition of judgment, upon the grounds that the bridge was assessed at largely more than its fair cash value, when all other real estate was assessed at less than one-third of its fair cash value; that the entire business of the plaintiff in error was interstate commerce, not subject to taxation, and the tax on the capital stock was in effect a tax on such commerce; that the tax was assessed on the whole capital stock, when only part, if any, was assessable in Illinois; that the assessment was not made in accordance with the rules of the State board of equalization; and that over six hundred feet of the bridge was located in Iowa and not subject to taxation in Illinois (R., 21, 22, 140–146, 2, 3, 4).

The court, however, entered judgment for the full amount claimed; from which judgment an appeal was taken to the Supreme Court of Illinois, and the latter court having affirmed the judgment, a writ of error was sued out and the case brought here (R., 193, 194, 195, 199, 202, 204, 206).

ASSIGNMENT OF ERRORS.

There was error:

1. In holding that the bridge, a structure constructed and maintained in execution of the powers of the Government, was subject to taxation by the State.

2. In holding that the boundary between Iowa and Illinois was not as designated and marked on the bridge by the commissioners of this court, but was about six hundred feet west of that point, whereby to that extent a part of the bridge situate in Iowa was taxed.

3. In sustaining the assessment upon the bridge at a rate of valuation three or four times the rate at which other real estate was assessed.

4. In sustaining the said assessment when such increase could only be attributed to the assessment of the business carried on by the plaintiff in error, that of interstate commerce, or to fraud.

5. In holding that the State of Illinois could tax the capital stock of the plaintiff in error, the tax being a tax on interstate commerce.

6. In holding that the State of Illinois could tax the entire capital stock of the plaintiff in error, said plaintiff being a consolidated corporation formed by the consolidation of a corporation of Iowa and one of Illinois and having its principal office at Keokuk, in the State of Iowa.

7. In sustaining the tax on the capital stock based upon an assessment which was arrived at by taking the value of the entire capital stock and deducting therefrom the value of the part of the bridge in Illinois.

8. In sustaining the tax of the franchise to construct and maintain the bridge and fix the compensation for the use thereof granted by the Federal Government.

POINTS.

I.

The bridge, a structure constructed and maintained by the authority of the Federal Government and in execution of its powers and operations, is not subject to taxation by the State of Illinois.

The plaintiff in error is an agent to carry into effect powers of the Government in respect of commerce. The act of Congress is on its face a regulation of commerce, and the bridge an instrument whereby, and whereby alone, the agency can be performed. The agent cannot, if it would, employ other means, but its duties in carrying into effect a regulation of commerce are necessarily restricted to the bridge and its works. It is the bridge that is to be maintained, together with the railway tracks and draw.

It was entirely competent for the Government to construct and maintain at its own expense, and had this course been adopted no one would assert that the bridge, the property of the Government, would be subject to State taxation. Another course, however, and one equally within the discretion of the Government, was adopted. It chose to give authority to the two companies to construct the bridge at their expense and the right and correlative duty to maintain it and as part of it the railway and draw. The cost of the bridge and the works was defrayed by the two companies, and this large investment was to be made productive by the exercise of the right to maintain for reasonable compensation. This right to compensation is given in terms in respect of the railways (sec. 1) doubtless because they are not ordinarily part of a bridge, but with respect to the bridge proper, including the draw, the right to reasonable compensation is necessarily implied as incident to the right to maintain.

The manifest intention of Congress was that in return for the cost of constructing the bridge and its works in the manner prescribed by the act the companies should be entitled to the reasonable profits arising from their use and operation. It is true that the grant of power in the act is to corporations existing under the laws of the two States, but it is equally true that whatever the powers of these corporations under State legislation which do not appear in the record, such powers, relating, as they must, to commerce and navigation, were subject to the paramount authority of Congress, and that Congress, by the exercise of such authority, gave by the above act its own charter for the construction and maintenance of the bridge, upon such terms, conditions, restrictions, and limitations as it deemed proper. Instead of adopting the legislation of the two States, if any, Congress legislated *de novo*, and the only reference to any legislation of the States is that under it the two corporations had existence (sec. 7).

It simply adopted two State corporations as agents, reserving to itself the character of principal and defining the terms of the agency created by it.

The action of Congress was in no sense permissive only, but was the exercise of its independent will and authority.

The act, then, being a regulation of commerce, and the bridge with its works the exclusive instrument for carrying into execution such regulation, it follows that such instrument is not liable to State taxation. The bridge does not exist by virtue of State authority, but by the authority of the Federal Government. The main body of the bridge is over a navigable river, subject to the exclusive jurisdiction of the Federal Government, the abutments and piers resting on the territory of the States. It does not seem possible to distinguish this case from McCulloch *vs.* Maryland, 4 Wheat., 316, and other authorities holding that the means and operations of the Government are exempt from State taxation, as, for instance,

money borrowed (Weston *vs.* City of Charleston, 2 Pet., 467), certificates of indebtedness issued for money or supplies (The Banks *vs.* The Mayor, 7 Wall.), bills of credit issued for circulation (Bank *vs.* Supervisors, 7 Wall., 28), and other cases.

It is true that the act of Congress contains no express exemption from State taxation, but neither was there any express exemption in any of the above cases. There is, however, in the present case the strongest implication against taxation, for surely Congress never meant to take property of great value and subject the purchase-money or the stipulated compensation to the arbitrary power of the two States. As stated by Chief Justice Marshall (McCulloch *vs.* Maryland), the power to tax involves the power to destroy.

It may be urged that there is a distinction between the means employed by the Government and the property of agents employed by it, as this court has declared in Thompson *vs.* Pacific R. R. Co., 9 Wall., 591, and that whilst "taxation of the agency is taxation of the means, taxation of the property of the agent is not always or generally taxation of the means" (*id.*). On this principle, State taxation was held valid in the case cited, and perhaps in others, in the absence of express exemption by Congress.

But apply the principle to the present case. Here is no taxation of the property of the agent outside of the agency. Undoubtedly, such property is not exempt by reason of the agency, but is taxable unless declared exempt by the sovereign authority.

But here the property taxed is directly within the agency and the very thing upon which the agency is exercisable. All the powers and correlative duties of the agent are to be performed upon or by means of the bridge and its works. These constitute the instrument selected by the Government. Power is given to the agent to maintain this instrument, charging for that purpose reasonable compensation in the form of tolls, and this power involves

Henderson Bridge Co. v. Henderson City, 173 U.S. 592.
R. R. v. Peniston, 18 Wall. 5

the correlative duty of maintenance. This is the agency, relating not only to the powers and duties of the agent, but to the instrument also, the latter being as much within the import of the agency as the former. Now, if the Government, in the exercise of its legitimate powers, employs an agent not only to render service, but to render it upon a particular thing, can it be said that whilst the services cannot be taxed by a State, the thing may be?

Can this be done under the rule declared by Chief Justice Marshall, speaking for this court, in Weston *vs.* The City of Charleston, 2 Pet., 466, "that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government?"

In the present case, without the bridge and its works the services of the agents cannot be rendered.

If the State may tax, it may sell for non-payment. What, then, becomes of the regulation of commerce and its enforcement?

It is submitted that the present case is strictly within the above rule, being one in which "taxation of the property of the agent is taxation of the agency itself."

II.

Apart from any agency or relation to the Government, the tax upon the bridge is illegal and void, because the bridge, an instrument of commerce, is liable to taxation only as property and not as a commercial instrument, and because the rate of assessment was not equal and uniform, but from three to five times as great as the rate at which other similar property was assessed.

1. The bridge is an instrument of commerce (Covington Bridge Co. *vs.* Kentucky, 154 U. S., 204). It was built to facilitate commerce by the transportaton of persons and property from shore to shore, and is maintained for that purpose and that alone. Whilst other real estate in the vicinity is capable of many uses, the bridge is capable of but one—that is, as an instrument of commerce. To tax it is necessarily to tax the business carried on by means of it. Apart from the business, the bridge has little, if any, value.

2. Not only was the bridge taxed, but at a rate of from three to five times as great as other real estate in the county. The latter was assessed at from one-third to one-fifth of its value. This is proved by the assessors (R., 58, 61–71, 9–17). The bridge was assessed at $79,900—that is, 1,565 feet—but the evidence of engineers and bridge-builders shows that that part of the bridge, including the Illinois approach, was only worth about $70,300, and that a new structure at that time would only have been worth $96,000. The life of a bridge of this description is about fifty years, and this bridge was finished in 1871 (R., 83, 90, 99, 105).

It is no answer to this to say that the plaintiff in error has no just ground of complaint because others were assessed too low, if the assessment of the plaintiff in error was not itself excessive. The necessary effect of the undervaluation was to throw upon the plaintiff in error more than its just share of taxation.

Cummings *vs.* National Bank, 101 U. S., 153.

III.

The tax is extraterritorial; more than six hundred feet of the bridge assessed are beyond the western boundary of Illinois and in the State of Iowa.

To make perfectly plain this contention it is necessary to understand the assessment. The assessment book, given in evidence by the State, shows, pages 38 to 40 (R., 24), that the approach to the bridge and part of the bridge were assessed together. After describing by courses and distances the approach, the east end of the bridge is reached, and the assessment proceeds: "and thence continuing the same course along the center line of said bridge 1,565 feet to the State line between the States of Illinois and Iowa" (R., 24).

It is thus apparent, and, indeed, is conceded, that Illinois taxed 1,565 feet of the bridge from the east end thereof.

The contention is that about six hundred feet of the bridge so taxed were situated beyond the limits of Illinois and in Iowa.

The suit in this court between the States was given in evidence (R., 147–175).

The order of this court appointing commissioners to carry into effect its decree required them (R. 168) "to locate and mark the State line between the States of Iowa and Illinois, pursuant to the opinion of this court in this cause, at each

of the nine bridges across the Mississippi river between these States, and inasmuch as there in an emergency existing therefor, it is ordered that said commissioners proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge and report at once their action in that regard before proceeding to ascertain the line or mark the same at the other bridges." * * *

The report of the commissioners, with an accompanying plat, was filed in this court March 30, 1893 (R., 171).

The line as designated and marked on the bridge, as shown by the plat, is a few feet east of the sixth pier, counting from the east end. The length of the spans from center to center of piers is given on the plat, and the distance of the line as marked on the bridge to the east end of the bridge is thus shown to be about 999 feet 4 inches, measuring to the center of the sixth pier. It is a little less—say, thirty or forty feet—because the line as marked is a little east of the sixth pier. (See plat, R., 171.) Now, the assessment is for 1,565 feet of the bridge from the east end.

It is thus demonstrated that of the part of the bridge taxed, about six hundred feet are in the State of Iowa. This tax, we submit, is invalid as to the part of the bridge in Iowa, and the tax being a unit and void in part is void *in toto*.

Santa Clara Co. *vs.* South. Pacific Railroad, 118 U. S., 394.

Philadelphia Fire Association *vs.* New York, 119 U. S., 110.

Not only is the tax void for extraterritoriality, which affects the whole tax, but it is also void for the reason that it denies equal taxation to the company, first, by taxing its real estate beyond the limits of Illinois, and, secondly, as to the bridge both within and without those limits, by taxing the company three or four times as much as other owners of real estate. No other owner of real estate beyond the

limits of the State is taxed therefor, and no other owner of real estate within the limits is assessed for more than one-fourth or one-third the value thereof. This happened in one of two ways. Either the bridge was designedly and hence fraudulently assessed at a gross overvaluation, or the bridge, an instrument of commerce, was assessed not as property only, but also on account of its earning capacity as such instrument engaged in interstate business.

Such is the contention of the company. The Federal questions are extraterritorial taxation in violation of the line as established by the enabling act of Congress of April 18, 1818, under which Illinois was admitted as a State, and inequality of taxation as shown by extraterritorial taxation and the valuation of the bridge at three or four times the property of other owners (R., 2, 3, 4, 9–16, 61–71). It may be said that the proposition that the dividing line between the States was conceded and, indeed, asserted by the court below to be the middle of the main channel of the river, and hence that the error of that court was one of fact only—that is, the application of a conceded rule to the subject-matter. In answer, we submit that the right of the company was to have "the title, right, privilege, or exemption" claimed not only admitted theoretically, but *enforced*, and that upon failure a writ of error lay from this court. The claim had as well not be conceded at all as conceded and then nullified by the action of the court. The trial of law and fact was by the court. The line as marked on the bridge was sustained by the report and plat of the commissioners returned to this court, and by the oral evidence of the commissioners, and other witnesses. Against the line so established was the evidence of witnesses who never sounded the river and who testified to what was a steamboat channel communicating with the United States canal on the Iowa side (R., 37, 41, 47, 49, 51, 54, 56). To deny the claim of the company the court had to overrule its own prior judgment between the same parties in 145 Illinois,

Regarding the reference as the mere act of this court, the report was at least *prima facie* evidence.

Medsker *vs.* Bonebrake, 108 U. S., 66.
Tilghman *vs.* Proctor, 125 U. S., 136.
Callaghan *vs.* Myers, 128 U. S., 617.

But the reference was the voluntary act of the parties who, by stipulation, agreed to it and designated the referees or commissioners and had the reference made a rule of court (R., 167, 168).

Hence the report was in principle an award upon voluntary submission and conclusive, in the absence of excess of authority, fraud, or misconduct, none of which is pretended. It could not be questioned for mistake, nor elsewhere than in this court.

Kimberly *vs.* Arms, 129 U. S., 512.
Burchell *vs.* Marsh, 17 How., 344.
Boston Water Power Co. *vs* Gray, 6 Metc., 181.

596, on the identical point (R., 198), and even held that the commissioners in fixing the line measured from shore to shore and not from side to side of the main channel (R., 198, 199). This holding has no support in the evidence, but is contradicted by the report, the plat, and the evidence of the commissioners. One of them, Meigs, swears that had they measured from shore to shore the line would have been *east* of the designated point on the bridge (R., 133, 134). It is evident that the evidence in behalf of the State was a clever device by local officers to defeat the action of the officers of this court. The report, it is submitted, fixed the line subject to the action of this court. The order of confirmation was struck out on motion of the State of Illinois (151 U. S., 238), and the report of commissioners, appointed at the instance of both States, has lain in this court for nearly six years without any opposition to confirmation on its merits. Such a report is convincing evidence and not lightly to be set aside, as was done by the court below. An individual in the position of the State of Illinois could not be said to occupy enviable ground from a moral standpoint.

IV.

The tax on the capital stock was illegal and void.

(*a.*) The tax is upon the valuation of the capital stock made by the board of equalization. It is necessarily upon the property and assets, franchises, and business of the company.

It is reached by making a valuation of all the corporate property of whatsoever kind, tangible and intangible, and then deducting the assessed value of the tangible property in Illinois. The balance is the valuation of the capital stock (R., 147).

In the present case the whole bridge is taxed, the part in Illinois as tangible property and the part in Iowa as

capital stock. This is conceded and sought to be justified by the opposing brief. From the aggregate valuation of the corporate property the assessed value of the east approach and of the 1,565 feet of the bridge are deducted, but the west approach and the residue of the bridge in Iowa are not deducted, and hence taxed as capital stock. Thus the State of Illinois taxes real estate confessedly beyond her jurisdiction. If the question were new it might well be argued that the law of Illinois properly construed does not attempt to do this, but the decisions of the supreme court of the State relied on must, we admit, be accepted as showing the meaning of the State law.

Then is such a tax valid? May the State of Illinois tax real estate beyond her jurisdiction? In State tax on foreign-held bonds this court held:

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business."

State Tax on Foreign-held Bonds, 15 Wall., 300, 319.

The right to tax the real estate in Iowa is in argument based on the fact that the first charter was granted by Illinois with power to consolidate, and that upon such consolidation with the corporation chartered by Iowa the real estate of the latter corporation in Iowa was by some process not explained brought within the jurisdiction of Illinois, although in fact it continued to be in Iowa, and although Illinois afforded and could afford no protection, the correlative of taxation, and although the theory necessarily involved double taxation.

The translation of the property from one State to the other is attributed to the consolidation. But the articles of consolidation are not in evidence, neither is the charter of the company set out in the opposing brief. All we know is that there was a consolidation, and that thereafter the

"location" of the company was Keokuk, in the State of Iowa.

It is submitted that the consolidation of corporations chartered by the different States did not have the effect claimed. The invalidity of the tax, so far as based on the Iowa real estate, would invalidate the whole tax.

(*b.*) But the tax is not only void as a tax on the real estate in Iowa. It is also void as a charge on interstate commerce and on franchises granted by the Federal Government.

Perhaps the main element entering into the valuation of capital stock is the business carried on.

The business here was interstate business—the transportation of persons and property from one State to the other.

Such a business is beyond State taxation. In the case of Henderson Bridge Co. *vs.* Kentucky, it was held under the circumstances that the bridge was not an instrument of commerce.

Henderson Bridge Co. *vs.* Kentucky, 166 U. S., 150.

In the present case the evidence shows that the only business carried on or that could be carried on was interstate. The bridge had and could have no other function.

Any doubt on this point is removed by the act of Congress of July 25, 1866, a copy of which is filed with our principal brief. This act shows that after the grant of the charter by Illinois and that by Iowa the two companies were authorized by Congress to construct and maintain the bridge, subject to the terms and restrictions mentioned. (See §§ 7 and 1, 2, 3.)

Thus the franchises of the company are not only derived from Illinois and Iowa, as assumed in the opposing brief, but also from the Federal Government. It is only necessary to read the act to be convinced that the bridge was

intended to be an instrument of commerce, and, indeed, made such both in respect of transportation and as a commercial agency in navigation.

Pensacola Tel. Co. *vs.* Western U. Tel. Co., 96 U. S., 1.

The act of Congress in the Henderson Bridge case, held to confer "no right or franchise on the company to erect the bridge or collect tolls for its use," was very different, being confined to making the bridge a post route.

Henderson Bridge Co. *vs.* Kentucky, 166 U. S., 150, 154.

A State cannot tax a franchise granted by the Federal Government.

California *vs.* Cent. Pac. R. R., 127 U. S., 1, 40, 41.

Tel. Co. *vs.* Texas, 105 U. S., 460.

Santa Clara County *vs.* South. Pac. R. R., 118 U. S., 394.

V.

The opposing brief, page 32 *et seq.*, takes the ground that there is no evidence to show consolidation or the terms thereof, and, indeed, that the company cannot set up the same, as it was not mentioned in the return to the county clerk.

If there was no consolidation there is an end of the alleged right of the State of Illinois to tax the real estate in Iowa, the predicate of which right as held by the Illinois cases relied on is consolidation.

In the absence of consolidation, the exercise of the alleged right would only be more flagrant.

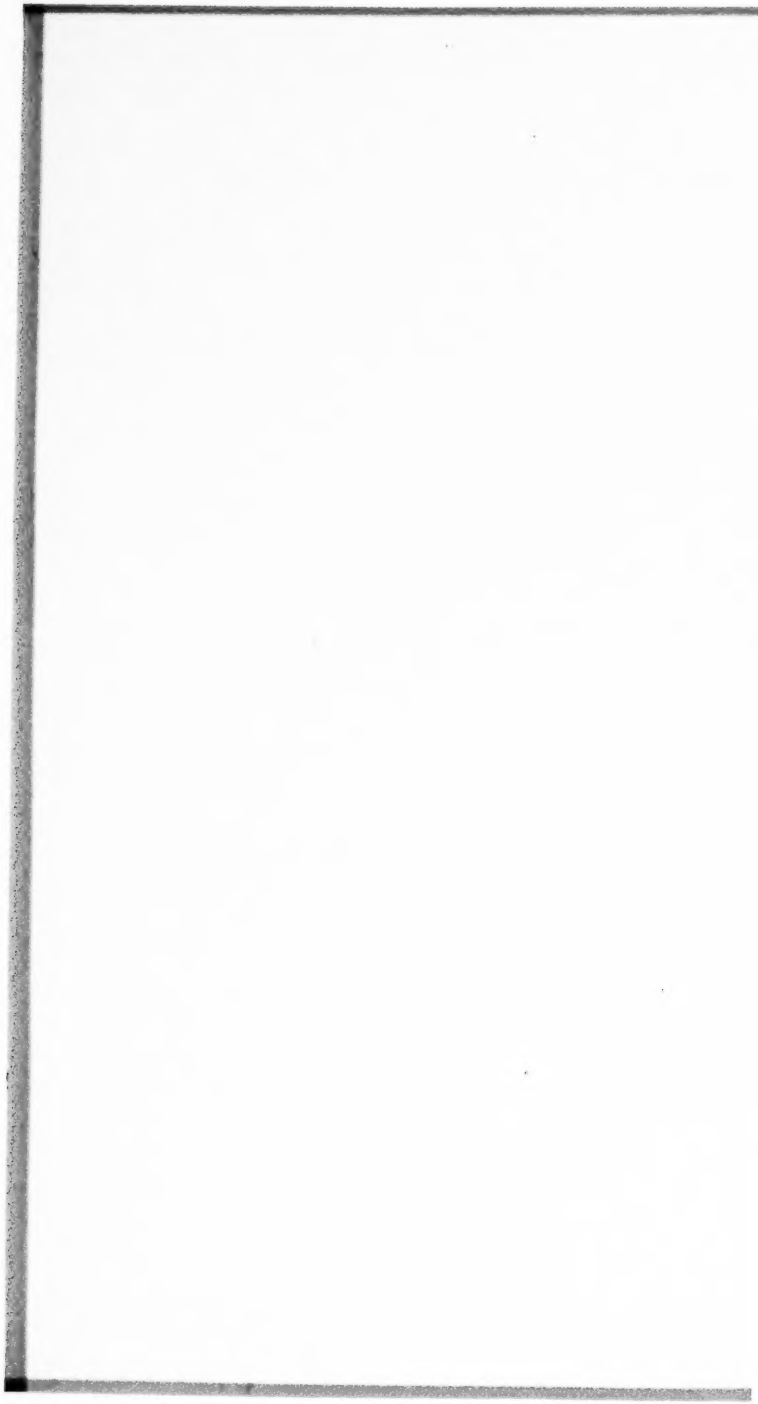
It is further contended that the company having in its return to the county clerk declared its capital was $1,000,000, authorized and paid up, is equitably estopped from showing that the valuation for a less amount is

illegal. But the company did no such thing. In compliance with law, it declared that $1,000,000, the authorized capital stock, had been paid up and all the shares issued (R., 138, 189). It further declared that the shares of stock had no market and no actual value. Now, the duty of the board was to determine "the fair cash value of the capital stock, including the franchise." This plainly meant the value at the time of the assessment by the board; in other words, the present value.

The rule of the board was that if capital stock had a cash value, as quoted by reliable commercial authority, such value was to govern the valuation. If, as here, there was no such value, the board was to be governed by the return and other information outside of the return (R., 144, 145).

Respectfully submitted.

W. D. DAVIDGE and
W. D. DAVIDGE, JR.,
Attorneys for Plaintiff in Error.



APPENDIX.

CHAP. CCXLVI.—An act to authorize the construction of certain bridges, and to establish them as post-roads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose, to build a bridge across the Mississippi river at Quincy, Illinois, and to lay on and over said bridge railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches.

SEC. 2. *And be it further enacted*, That any bridge built under the provisions of this act may, at the option of the company building the same, be built as a drawbridge, with a pivot or other form of draw, or with unbroken or continuous spans. *Provided*, That if the said bridge shall be made with unbroken and continuous spans, it shall not be of less elevation in any case than fifty feet above extreme high-water mark, as understood at the point of location, to the bottom chord of the bridge, nor shall the spans of said bridge be less than two hundred and fifty feet in length,

and the piers of said bridge shall be parallel with the current of the river, and the main span shall be over the main channel of the river and not less than three hundred feet in length: *And provided also*, That if any bridge built under this act shall be constructed as a drawbridge, the same shall be constructed as a pivot drawbridge with a draw over the main channel of the river at an accessible and navigable point, and with spans of not less than one hundred and sixty feet in length in the clear on each side of the central or pivot pier of the draw, and the next adjoining spans to the draw shall not be less than two hundred and fifty feet; and said spans shall not be less than thirty feet above low-water mark, and not less than ten above extreme high-water mark, measuring to the bottom chord of the bridge, and the piers of said bridge shall be parallel with the current of the river: *And provided also*, That said draw shall be opened promptly upon reasonable signal for the passage of boats whose construction shall not be such as to admit of their passage under the permanent spans of said bridge, except when trains are passing over the same; but in no case shall unnecessary delay occur in opening the said draw during or after the passage of trains.

SEC. 3. *And be it further enacted*, That any bridge constructed under this act and according to its limitations, shall be a lawful structure, and shall be recognized and known as a post route; upon which, also, no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States, than the rate per mile paid for their transportation over the railroads or public highways leading to the said bridge.

SEC. 4. *And be it further enacted*, That it shall be lawful for the Chicago, Burlington and Quincy Railroad Company, a corporation whose road has been completed to the Mississippi river, and connects with a railroad on the opposite side thereof, having first obtained authority therefor from the States of Illinois and Iowa, to construct a railroad

bridge across said river, upon the same terms, in the same manner, under the same restrictions, and with the same privileges, as is provided for in this act in relation to the bridge at Quincy, Illinois.

SEC. 5. *And be it further enacted*, That a bridge may be constructed at the town of Hannibal, in the State of Missouri, across the Mississippi river, so as to connect the Hannibal and Saint Joseph railroad with the Pike County and Great Western railroads of Illinois, on the same terms and subject to the same restrictions as contained in this act for the construction of the bridge at Quincy, Illinois.

SEC. 6. *And be it further enacted*, That a bridge may be constructed across the Mississippi river between Prairie du Chien, in the State of Wisconsin, and North McGregor, in the State of Iowa, with the consent of the legislatures of Wisconsin and Iowa, on the same terms and subject to the same restrictions as are contained in this act for the construction of the bridge at Quincy, Illinois.

SEC. 7. *And be it further enacted*, That the Keokuk and Hamilton, Mississippi, Bridge Company, a corporation existing under the laws of the State of Iowa, and the Hancock County Bridge Company, a corporation existing under the laws of the State of Illinois, be and are hereby authorized to construct and maintain a bridge over the Mississippi river between Keokuk, Iowa, and Hamilton, Illinois, of the same character, description, and construction as provided in this act for the bridges at Quincy and Burlington; and the said bridge, in its use and operation, shall be subject to the same restrictions that apply to said bridges at Quincy and Burlington by the terms of this act.

SEC. 8. *And be it further enacted*, That the Winona and Saint Peter Railroad Company, a corporation existing under the laws of the State of Minnesota, is hereby authorized to construct and operate a railroad bridge across the Mississippi river between the city of Winona, in the State of Minnesota, and the opposite bank of the said river, in the State

of Wisconsin, with the consent of the legislatures of the States of Minnesota and Wisconsin; and said bridge by this section authorized is hereby declared a post route, and subject to all the terms, restrictions, and requirements contained in the foregoing sections of this act.

SEC. 9. *And be it further enacted*, That a bridge may be constructed and maintained across the Mississippi river, between Dunleith, in the State of Illinois, and Dubuque, in the State of Iowa, with the consent of the said States previously given or hereafter acquired, with the same privileges, upon the same terms, and under the same restrictions as are contained in this act for the construction of a bridge at Quincy, Illinois.

SEC. 10. *And be it further enacted*, That any company authorized by the legislature of Missouri may construct a bridge across the Mississippi river, at the city of Kansas, upon the same terms and conditions provided for in this act.

SEC. 11. *And be it further enacted*, That the "Saint Louis and Illinois Bridge Company," a corporation organized under an act of the General Assembly of the State of Missouri, approved February fifth, eighteen hundred and sixty-four, and an act amendatory of the same, approved February twentieth, eighteen hundred and sixty-five, and also confirmed in its corporate powers under an act of the legislature of the State of Illinois, approved eighteen hundred and sixty-four, or any other bridge company organized under the laws of Missouri and Illinois, be, and the same is hereby, empowered to erect, maintain, and operate a bridge across the Mississippi river, between the city of Saint Louis, in the State of Missouri, and the city of East Saint Louis, in the State of Illinois, subject to all the conditions contained in said act of incorporation and amendments thereto, and not inconsistent with the following terms and provisions contained in this act. And in case of any litigation arising from any obstruction or alleged obstruction to the

free navigation of said waters, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches.

SEC. 12. *And be it further enacted*, That the bridge authorized by the preceding section to be built shall not be a suspension bridge, or drawbridge, with pivot or other form of draw, but shall be constructed with continuous or unbroken spans, and subject to these conditions: First, that the lowest part of the bridge or bottom chord shall not be less than fifty feet above the city directrix at its greatest span. Second, that it shall have at least one span five hundred feet in the clear, or two spans of three hundred and fifty feet in the clear of abutments. If the two latter spans be used, the one over the main steamboat channel shall be fifty feet above the city directrix, measured to the lowest part of the bridge at the center of the span. Third, no span over the water, at low-water mark, shall be less than two hundred feet in the clear of abutments.

SEC. 13. *And be it further enacted*, That the right to alter or amend this act, so as to prevent or remove all material obstructions to the navigation of said river by the construction of bridges, is hereby expressly reserved.

Approved July 25, 1866.

Rev. Stat. Ill. 1893, Hurd, chap. 120, § 3.

"Fourth. The capital stock of all companies and associations now or hereafter created under the laws of this State except those required to be assessed by the local assessors, as hereinafter provided, shall be so valued by the State board of equalization as to ascertain and determine respectively the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible

property of such company or association; such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as it may deem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration, or amendment as may be found from time to time to be necessary by said board: *Provided*, That in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock, or shares of capital stock of banks organized under the general banking laws of the State, or under any special charter heretofore granted by the legislature of this State: *Provided further*, That companies and associations organized for purely manufacturing purposes, or for the mining and sale of coal, or for printing, or for publishing of newspapers, or for the improving and breeding of stock, shall be assessed by the local assessors in like manner as the property of individuals is required to be assessed."

§ 8:

"The State board of equalization shall assess the capital stock of each company or association, respectively, now or hereafter incorporated under the laws of this State, in the manner hereinbefore in this act provided. The respective assessments so made (other than of the capital stock of railroad and telegraph companies) shall be certified by the auditor, under direction of said board, to the county clerk of the respective counties in which such companies or associations are located, and said clerk shall extend the taxes for all purposes on the respective amounts so certified the same as may be levied on the other property in such towns, districts, villages, or cities in which such companies or associations are located."

No. 26.

Brief of Akin for D. E.

Filed Oct. 9, 1899.

Supreme Court of the United States

OCTOBER TERM, A. D. 1899.

Office Supreme Court U. S.
FILED
OCT 9 1899
JAMES H. MCKENNEY,
Clerk.

THE KEOKUK AND HAMILTON BRIDGE COMPANY,
PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS
DEFENDANTS IN ERROR.

26

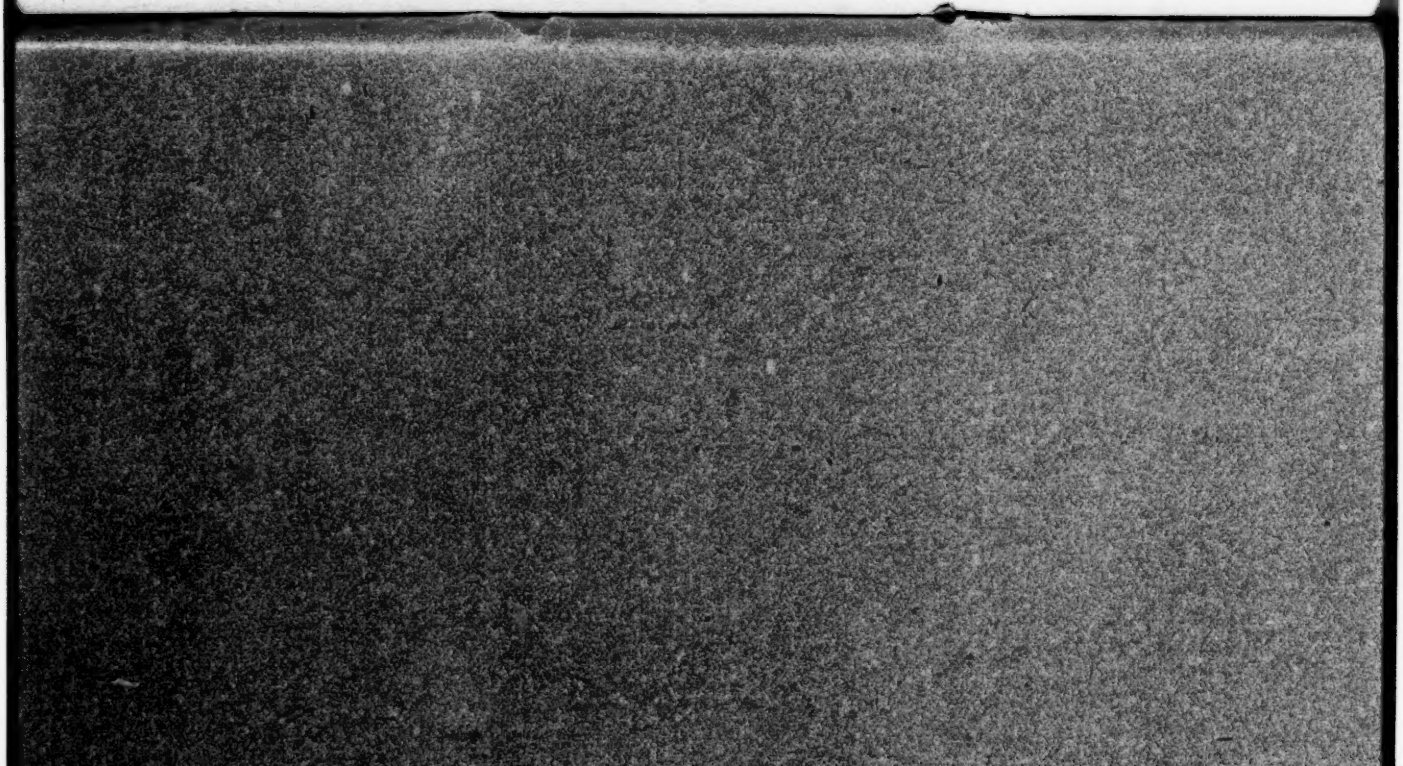
Appeal from the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR.

EDWARD C. AKIN,
Attorney General.

O. F. BERRY,
Of Counsel.

For other briefs of Akin in this case see No. 23 of 1898. (Same title).



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1899.

THE KEOKUK AND HAMILTON BRIDGE COMPANY,
PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS
DEFENDANTS IN ERROR.

Appeal from the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR.

TAXATION OF INSTRUMENTS OF INTER-STATE COMMERCE BY THE STATES.

That the states can not tax, regulate or control inter-state commerce requires no citation of authorities. The states have no right to impose restrictions either by the way of taxes, discrimination or regulation upon commerce between the states. But the states have a right to tax the instruments of such commerce as other property of like description is taxed within their jurisdiction. Thus, an interstate bridge across a river is an instrument of com-

merce, and the portion lying within a state may be taxed by that state like other property of the same kind wholly within the state.

Covington and Cincinnati Bridge Co. *v.* Kentucky, 154 U. S., 204, 212.

Henderson Bridge Co. *v.* Kentucky, 166 U. S., 150.

While no state can impose any taxes or burdens upon the privilege of doing business of inter-state commerce, yet it has the unquestionable right to tax the instrumentalities engaged in such commerce.

Mayer *v.* Baltimore and Ohio Railroad Co., 127 U. S., 117.

Pullman's Palace Car Co. *v.* Pennsylvania, 141 U. S., 18.

Cleveland, Cincinnati, Chicago & St. Louis Railroad Co. *v.* Backus, 165 U. S., 439, 445.

Henderson Bridge Co. *v.* Kentucky, 166 U. S., 150.

Thus, the property of railroads, telegraph and sleeping car companies engaged in inter-state commerce, may be taxed in the several states through which their lines of business run without violating any federal restrictions of law.

Western Union Telegraph Co. *v.* Massachusetts, 125 U. S., 530.

Massachusetts *v.* Western Union Telegraph Co., 141 U. S., 40.

Pullman's Palace Car Co. *v.* Pennsylvania, 141 U. S., 18.

Maine, *v.* Grand Trunk Railroad Co., 142 U. S., 217.

Western Union Telegraph Co. *v.* Taggart, 165 U. S., 1.

Under these decisions of the United States Supreme Court, the bridge across the Mississippi river is an instrument of inter-state commerce and each state may tax the part lying within its jurisdiction as it taxes its other property.

That Illinois may tax the Keokuk bridge to the middle of the main channel of the Mississippi river does not admit of a doubt.

Domicile of Corporations.

The domicile of a corporation is the state of its organization.

Potter on Corporations, Section 10.
Quincy Bridge Co. *v.* Adams county, 88 Ill., 615.
Ohio & Mississippi Railroad Co. *v.* Weber, 96 Ill. 443.
Keokuk Bridge Co. *v.* People, 161, Ill. 132.
Bank of Augusta *v.* Earle, 13 Pet. U. S. 586.

A corporation can not emigrate to another sovereignty or state.

Bank of Augusta *v.* Earle, 13 Pet. U. S., 586.
Paul *v.* Virginia, 8 Wall, U. S., 168.
St. Louis *v.* The Ferry Co., 11 Wall, U. S., 423.

It is a fundamental principle that a person must have a domicile in the state in order to be taxed and the thing a situs therein.

Hays *v.* Pacific Mail Co., 17 How. U. S., 506.
Morgan *v.* Parham, 16 U. S. 471.

A corporation is liable to taxation upon all its property which is of such a nature as to be taxable at the residence of the owner and the kind of property denominated as "capital stock" does not mean shares of stock, either separately or in aggregate, but designates the property of a corporation subject to taxation as a homogenous unit, partaking of the nature of personalty, subject to the burdens imposed upon it at the domicile of the owner.

Keokuk Bridge Co. *v.* People, 161, Ill., 132.
National Bank *v.* Commonwealth, 9 Wall, U. S., 353.
Illinois Railroad Tax Cases, 92, U. S., 575.
Commonwealth *v.* Standard Oil Co., 101 Pa. St., 119.

The capital stock of a corporation formed by the consolidation of corporations of different states under the Illinois laws is properly taxable in Illinois, as the corporate exist-

ence springs from the legislation of said State, and is to be treated and regarded by the authorities of the State as domiciled there.

Keokuk Bridge Co. *v.* People, 161 Ill., 132.

Quincy R. R. Bridge Co. *v.* Adams county, 88 Ill., 615.

Therefore, after the consolidation of the two corporations under the Illinois laws, Illinois was the domicile and could tax its capital stock and the consolidated corporation could not emigrate to Iowa, as a corporation must dwell in the place of its creation and can not emigrate to another State.

Bank of Augusta *v.* Earle, 13 Pet. U. S., 586.

A consolidation formed from pre-existing corporations is a citizen of each of the states which have chartered any of the constituents.

Fitzgerald *v.* Missouri Pacific Railway Co., 45 Fed. Rep., 812.

Ohio & M. R. R. Co. *v.* Wheeler, 1 Black, 286.

Railroad Co. *v.* Whittens, Admr., 13 Wall, 270.

Muller v. Dows, 94 U. S., 444.

Ohio & M. R. R. Co. *v.* Weber, 96 Ill., 443.

If the Court please:

This case and No. 23, on the docket of this Court, October term, 1898, were argued and submitted together.

Case No. 23 was dismissed by this Court, and an order for reargument made in this case, to be heard at the present October term of this Court.

This action is a proceeding by the people of the State of Illinois against the Keokuk & Hamilton Bridge Company for the taxes due the State of Illinois, and the several municipalities therein, for the year 1894. It was tried in the County Court of Hancock county, Illinois at the August term, 1895. Judgment was rendered against the Bridge Company and in favor of the people, for the amount of taxes due. The Bridge Company appealed the case to

the Supreme Court of Illinois, and the judgment of the lower Court was affirmed January 18, 1897. The case is reported in full in 167 Ill., at page 15. (See record, page 198–9.) A motion for rehearing was denied June 21, 1897. Appeal was prayed and granted to this Court, and record filed October 29, 1897. The bridge tax for the year 1894 is $2,708.61; capital stock tax, $1,019.71; and dyke tax, $254.92.

The questions presented by the record in the court below are as follows:

First. It was contended by the plaintiff in error that the line between Illinois and Iowa is the middle of the river, measuring from shore to shore, and that the State of Illinois, in assessing and taxing said Keokuk and Hamilton Bridge, have assessed and taxed it beyond the boundary line of the State of Illinois.

Second. The Keokuk and Hamilton Bridge Company was claimed to be a consolidated corporation formed by consolidation of an Iowa with an Illinois corporation, and it was therefore claimed by the Bridge Company that the State of Illinois illegally assessed and taxed the capital stock of said corporation in Illinois, when one-half thereof should have been assessed and taxed in the State of Iowa.

It will be seen by an examination of the record that the two questions above stated present the main issues in this case.

We submit to the Court as our first proposition the following:

The line between the State of Illinois and the State of Iowa is not the middle of the river, measuring from shore to shore, but the line between the States is the middle of the main navigable channel of the Mississippi river.

In the case between the Keokuk and Hamilton Bridge Company vs. the People, decided by our Supreme Court in 1893 and reported in 145 Illinois at page 596, this proposition was argued at great length by that Court, and

we can not do better in presenting our views than to quote from the opinion in that case rendered by Justice Craig, beginning at page 601:

"There is much discussion in the arguments of the respective parties as to the true location of the boundary line between Illinois and Iowa, where the bridge in question is located, across the Mississippi river; but as that question has recently been decided by the Supreme Court of the United States, we shall content ourselves with citing but a few of the many authorities bearing on the question."

In Wheaton on International Law (3d Eng. ed.) Sec. 200, the author said: "By the treaty of peace, concluded at Paris in 1763, between France, Spain and Great Britain, the Province of Canada was ceded to Great Britain by France, and that of Florida to the same power by Spain, and the boundary between the French and British possessions in North America was ascertained by a line drawn through the middle of the river Mississippi, from its source to the Iberville, and from thence through the latter river and the lakes of Maurepas and Pontchartrain to the sea."

The boundary line thus established between the territories belonging to England and France, as established by the treaty was the middle of the Mississsippi river, and it is clear that a line thus established between two governments would be the middle of the main channel or channel of commerce, so that each government might have a free and unobstructed navigation of the river. After peace had been established between thd United States and England, the territory lying on the east of the Mississippi river passed into the hands of the United States and that on the west remained in the hands of France, the boundary remaining the same as before.

The act of Congress of April 18, 1818, authorizing the people of Illinois to form a constitution, after defining the northern boundary, declared as follows: "Thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river." (1 Star & Curt., p. 50.)

The same language as respects the boundary has been preserved in the constitution of the State of 1818, 1848 and 1870. (Id., pp. 55, 68, 99.)

The enabling act for Iowa, passed in 1848, (5 U. S. Stat., p. 742,) fixes the eastern boundary of the State as follows: "Beginning at the mouth of the Des Moines river, at the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude," etc.

The enabling act for the admission of Wisconsin, enacted in 1848, 9 U. S., Statute 56, gives the western boundary of the State as follows: "Thence down the center of the main channel of the Mississippi river to the northwest corner of the State of Illinois."

Where the middle of a navigable river becomes the boundary line between two states, as was the case with Illinois and Iowa, the middle of the current or channel will be regarded as the boundery line.

Thus Wheaton, Sec. 192, says: "Where a navigable river forms the boundary of coterminous states, the middle of the channel, or thalweg, is generally taken as the line of separation between the two states, the presumption of law being that the right of navigation is common to both, but this presumption may be destroyed by actual proof of prior occupancy and long undisturbed possession, giving to one of the riparian proprietors the exclusive title to the entire river."

In Creasy on International Law, Sec. 231, it is said:

"It has been said that where a navigable river separates neighboring states, the thalweg, or middle of the navigable channel, forms the line of separation. Formerly a line drawn along the middle of the water *medium filum aquæ*, was regarded as the boundary line, and still will be regarded *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now considered the line of demarcation."

See, also, Buttenuth *v.* St. Louis Bridge Company, 123 Ill., 535, where it is held that the middle of the main chan-

nel of a river between states will be regarded as the boundary line.

In St. Louis *v.* Rutz, 138 U. S. 226, it is said:

"The enabling act of April 18, 1818, 3 Stat., 429, Sec. 2, under which Illinois was organized as a State and admitted into the Union, made the middle of the Mississippi river the western boundary of the State. The enabling act of March 6, 1830, 3 Stat., Sec. 2, under which Missouri was organized as a state and admitted into the Union, made the middle of the main channel of the Mississippi river the eastern boundary of Missouri, so far as its boundary line was coterminous with the western boundary of Illinois. It has been held by the Supreme Court of Illinois, Buttenuth *v.* St. Louis Bridge Company, 123 Ill., 535, that these two enabling acts are to be construed as in *pari materia*, and that the common boundary line between Missouri and Illinois is the 'middle of the main channel of the Mississippi river.' The 'middle of the main channel of the Mississippi' has been constantly treated as the eastern boundary of the State of Missouri. Jones *v.* Soulard, 24 How., 41; The Schools *v.* Risley, 10 Wall, 91."

The question here involved was before the Supreme Court of the United States in The State of Iowa *v.* The State of Illinois, 147 U. S., p. l., at the October term, 1892, of the Court, and after a review of the authorities bearing on the question the Court, among other things, said:

"That the true line in navigable rivers, between the states of the Union, which separates the jurisdiction of one from the other, is the middle of the main channel of the river. Thus the jurisdiction of each state extends to the thread of the stream, that is to the middle of the channnel, and, if there be several channels, to the middle of the principal one, or rather the one usually followed. Under the authorities, we think it is plain that the boundary line between Iowa and Illinois, where the bridge of appellant is constructed, is the middle of the main channel of the river; in other words, the thread of the stream."

The boundary line between the territories belonging respectively to Great Britain and France, as fixed by the treaty of 1763, was the middle of the Mississippi river. It needs no argument to show that an international boundary

line, established by this language, would be the middle of the main channel, or channel of commerce. Every consideration, both of dominion and commercial equality, would give to the language this meaning.

Where the enabling act creating a state out of part of the territory embraced in the treaty uses the same language to define the boundary as that used in the treaty, it will certainly receive the same construction as that given to the treaty, unless for most obvious reasons another construction should obtain.

After the peace between the United States and Great Britain, the territory on the east of the Mississippi passed to the United States, while that on the west remained with France.

Unquestionably the boundary line remained the same. The same consideration which fixed it in the old relations would retain it in the new.

Subsequently the State of Illinois was created out of the territory on the east of this boundary line, and the State of Iowa out of that on the west.

Wheaton says (Section 192, p. 291):

"Where a navigable river forms the boundary of coterminous states, the middle of the channel, or *thalweg*, is generally taken as the line of separation between the two states, the presumption of the law being that the right of navigation is common to both; but this presumption may be destroyed by actual proof of prior occupancy and long undisturbed possession, giving to one of the riparian proproprietors the exclusive title to the entire river."

Therefore, according to this eminent author, the middle of the channel of the river is the boundary line. What is the channel of the river? Clearly it is not the same thing as the bed of the river.

Wheaton says (Sec. 202, p. 301).

"The channel of the Mississippi was remarkably winding, crossing and recrossing perpetually from one side to the other of the general bed of the river."

The general bed of the river is the space between the two shores, but the channel of the river is the navigable portion of the river—that portion of the river suited for and generally used for the purposes of navigation. As Wheaton says, the middle of the channel, or thalweg, is taken as the line of separation between two states, because the presumption of law is, that the right of navigation is common to both. What each nation or power would insist upon was an equal right to the navigation of the river. This could not be obtained if the river was divided by drawing a line between two shores unless the width of the navigable channel was coincident with the distance between the two shores. Each nation demands one-half of the navigable channel in whatever part of the river it is located, and the states created out of the territory belonging to these nations would take the same boundaries.

Therefore, where the middle of the river is made the boundary, the line is drawn in the middle of the navigable channel. It is in this sense that the words are used in the treaty of 1763.

In Creasy on International Law, p. 222, Sec. 231, it is said:

"It has been stated that where a navigable river separates neighboring states, the thalweg, or middle of the navigable channel, forms the line of separation. Formerly a line drawn along the middle of the river, the *medium filum aquae*, was regarded as the boundary line, and still will be regared *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now considered to be the line of demarcation."

In Halleck on International Law, Vol. 1, p. 145, Sec. 23, it is said:

"Where the river not only separates the coterminous states, but also their territorial jurisdiction, the thalweg, or middle channel, forms the line of separation through

the bays and estuaries through which the waters of the river flow into the sea. As a general rule, this line runs through the middle of the deepest channel, although it may divide the river and its estuaries into two very unequal parts. But the deeper channel may be less suited, or totally unfit, for the purposes of navigation, in which case the dividing line would be in the middle of the one which is best suited and ordinarily used for that object."

Cited with approval in Wheaton's Digest of International Law of the United States, Vol. 1, p. 97.

While we readily admit that the right of navigation which would fix the middle of the navigable channel as the boundary between separate or alien nations does not operate with the same force between the States of the American Union, yet the question remains, where a boundary line has been fixed between two alien powers, and the same line, described in particularly the same languarge, becomes the boundary between two states of the American Union, will the changed political condition so affect the force of the language used as to change the boundary line?

The enabling act for admitting Wisconsin, passed in 1846, (9 U. S. Stat., p. 56), gives the western boundary of that state as "thence down the center of the main channel of that (Mississippi) river to the northwest corner of the State of Illinois," therefore, it must be in the middle of the main channel of the river, and it is down along the middle of the main channel of the river that the western boundary of Illinois runs. If the words, "in the middle of the river," in the enabling act of Illinois, and the words, "middle of the main channel," in the enabling acts for Iowa and Missouri, do not describe the same line, then it would result that there is some portion of the river which would be in none of the states, a construction which could not be allowed.

In Buttenuth v. St. Louis Bridge Co., 123 Ill., 535, this Court says, p. 551:

"The suggestion, Congress by its enabling acts may have established one line in the Mississippi river for the

eastern boundary for Missouri, and another line, farther east, for the western boundary of Illinois, has nothing, in law or in fact, upon which to rest. The whole legislation on this subject shows, as before remarked, it was the intention of Congress to make the river a 'common boundary' between these states, and the expression used in both enabling acts, although the words used may not be the same, make the middle of the main channel of the permanent river the boundary line."

We understand the Court here to say that the middle of the main channel of the permanent river is the boundary line. That the permanent river is one thing, and the main channel of the permanent river is another thing. The main channel, as we view it, and as attorneys for plaintiff view the matter, is not the same thing as the river from shore to shore. What, then, is the main channel of the river? We believe that the law is that it is the channel which is best suited and is usually used for the purposes of navigation—the channel of commerce used by vessels in the carrying trade.

This question is not a new one in this Court. In the case of the State of Iowa v. the State of Illinois, in 147 U. S., the case brought in this Court for the purpose of determining the boundary line between the two states, in this case, which is the same issue as the one raised here, the Bridge Company take the same position as the State of Iowa took in that case, while our position is the same as taken by the State of Illinois.

Justice Field, in delivering the opinion in that case, states most tersely the contention as follows:

"The Mississippi river flows between the states of Iowa and Illinois. It is a navigable stream, and constitutes the boundary between the two states; and the controversy between them is as to the position of the line between its banks or shores which separates the jurisdiction of the two states for the purposes of taxation and other purposes of government.

"The complainant, the State of Iowa, contends that, for taxation and for all other purposes, the boundary line is the middle of the main body of the river, taking the middle

line between its banks or shores without regard to the 'steamboat channel,' as it is termed, or deepest part of the stream, and that, to determine the banks or shores, the measurements must be taken when the water is in its natural or ordinary stage, neither swollen by floods nor shrunk by droughts.

"On the other hand, the defendant, the State of Illinois, claims that, for taxation and all other purposes, its jurisdiction extends to the middle of 'the steamboat channel' of the river, wherever that may be, whether on its east or west bank—the channel upon which commerce on the the river by steamboats or other vessels is usually conducted, and which for that reason is sometimes designated as 'the channel of commerce.' "

The State of Iowa cited, on behalf of its contention, the case of The Dunlieth and Dubuque Bridge Company v. The County of Dubuque, 55 Iowa, 558, wherein the Supreme Court of Iowa decided that the boundary line was the middle of the river measuring from bank to bank. The State of Illinois cited, on behalf of its contention, the case of Buttenuth v. St. Louis Bridge Company, 123 Ill., 535, wherein the Supreme Court of Illinois decided that the boundary line was the middle of the channel of commerce. This Court, it is conceded, decided in accordance with the contention of the State of Illinois.

In the above case this Court, after reviewing the issues fully, and also reviewing the two last cases above cited, in the close of their opinion, say:

"The opinions in both of these cases are able, and present in the strongest terms the different views as to the line of jurisdiction between neighboring states, separated by a navigable stream; but we are of the opinion that the controlling consideration in this matter is that which preserves to each state equality in the right of navigation in the river. We, therefore, hold, in accordance with this view, that the true line in navigable rivers between the states of the Union, which separates the jurisdiction of one from the other, is the middle of the main channel of the river. Thus the jurisdiction of each state extends to the thread of the stream, that is, to the 'mid-channel,' and, if there be several channels, to the middle of the principal one, or, rather, the one usually followed."

It seems to us that the authorities cited and the finding of the Court, as above quoted, in the case of Iowa v. Illinois, 147 U. S., forever settles the question as to the line of jurisdiction between the State of Iowa and the State of Illinois, and establishes the main channel of the river as that line.

On this branch of the case, the question alone remains to be settled as to whether or not the assessment, as made, was valid. If that part of the bridge assessed was within the State of Illinois, then the Supreme Court of Illinois should be affirmed.

The report made by the commissioners being set aside, the assessor followed the decision of this Court in the case of Iowa v. Illinois, and our own Supreme Court, and assessed to the state line as determined in that case.

And upon the trial of the case in the County Court, the people introduced a large number of witnesses to show where the main navigable channel of the river was. And our examination of their testimony clearly shows that the channel of the river at the bridge was not to exceed 550 feet east from the Iowa shore. In this case 1,567 feet of the bridge was assessed as in Illinois, leaving 625 feet in Iowa, being fully 75 feet more than the evidence shows belongs there. In fact, that the channel is where we showed it to be, is not denied, but it is insisted that the line between the states is the middle of the river, measuring from shore to shore. This case was very fully presented to the Supreme Court of Illinois, and the opinion of that Court is short and finds the facts fully, and we can not better present the case than by inserting that opinion, which is found in 167th Illinois, beginning at page 15, and is as follows:

Mr. Justice Wilkin delivered the opinion of the Court:

"This is an appeal from the judgment of the County Court of Hancock County for delinquent taxes assessed against appellant for the year 1894. The grounds of reversal are, first, the assessments were fraudulently made; second, that whole of the capital stock is assessed in this State, whereas an undivided half of it is taxable in Iowa; third, the judg-

ment is upon an assessment upon a part of appellant's bridge not in the State of Illinois, but in the State of Iowa."

The facts upon which the first two grounds are based are substantially the same as those upon which similar objections were raised in cases between the same parties in 145 Ill., 596, and 161 id., 132 and 514, and are disposed of adversely to appellant by those decisions.

The last point is based upon the contention that the State line crosses the bridge of the appellant at a place marked by the commissioners appointed in Iowa v. Illinois, 47 U. S., 1. The record now before us shows that the order of the Supreme Court of the United States confirming the report of these commissioners was subsequently set aside and vacated. The commissioners who made that report were examined as witnesses on the hearing below on behalf of appellant, and it is clear from their testimony that they fixed the line between the two states at the center of the river and not at the center of its main channel. The decree of the Supreme Court of the United States, under which they were appointed, ordered as follows:

"The boundary line between the State of Iowa and State of Illinois is the middle of the main navigable channel of the Mississippi river; and as the counsel of the two states desire that this boundary line be established at the nine bridges across the Mississippi river, it is further ordered that a commission be appointed to ascertain and designate at said places the boundary line between the two states, such commission consisting of three competent persons to be named by the Court upon suggestion of counsel, and be required to make the proper examination, and to delineate on maps prepared for that purpose the line as determined by this Court and report the same to this Court for its further action. Following that decree and other authorities cited in the opinion, we said in the case in 145 Ill., (on p. 604): 'Under the authorities, we think it is plain that the boundary line between Iowa and Illinois, where the bridge of appellant is constructed, is the middle of the main channel of the river—in other words, the thread of the stream.'

"Accepting the uncontroverted testimony of witnesses in that case as fixing the center of the main channel, and hence the state line, at a certain point, it was held that a portion of the bridge in the State of Iowa had been improperly assessed as in this State. In the present case, 1,567 feet were assessed as being in Illinois and 625 treated as being in Iowa. Several experienced river men, captains and pilots of steamboats running on the Mississippi river at that point for a great many years, both before and since the bridge was built, were introduced by the People in this case, and testified that the east side of the navigable channel at the bridge was not to exceed 550 feet east from the Iowa shore. It is conceded if the state line is where the testimony of these witnesses fixes it, all that part of the bridge included in this assessment is in this State. Although appellant introduced several witnesses, including the commissioners above mentioned, for the purpose of establishing the line further east, they do not contradict the People's witnesses as to the location of the main navigable channel, but they treat the middle of the bed of the river as the thread of the stream. At least we think the County Court was justifiable in finding, from all the evidence, that no part of the bridge assessed is in the State of Iowa. Its judgment will accordingly be affirmed."

In a brief of plaintiff in error presented in this case on the former hearing counsel argue at some length that the line between Iowa and Illinois is the middle of the river, without any reference to the channel, and on pages nine and ten of their former brief insist that the witnesses on the part of the people do not locate the main navigable channel. We submitted in our former brief the finding of our Supreme Court upon that question, which we think is conclusive, but let us now see what the people did show upon that issue:

Samuel Ball says: I am a steamboat captain and pilot. I began this business April 10, 1837 (Record, P. 30). I know where the main navigable channel of the Mississippi runs; is opposite Keokuk (R., Page 31).

Q. 16, P. Re. "About how far is it from the Iowa shore? A. I presume that the whole bridge is about 2,000 feet;

the channel never was to exceed 400 to 500 feet wide, and that would leave about 1,600 feet to the Illinois shore, that is, from the extreme east part of the channel.

Q. 28, P. 33 of Rec. State to the Court whether or not there was another channel that boats could pass up and down the Mississippi with an ordinary stage of water except the one you have described. Ans. No, sir.

Robert Ferris: I began steamboating in 1853 on the Mississippi; began as special pilot in 1846. On page 38 and 39 he says: I know where the navigable channel of the Mississippi river is between Keokuk and Hamilton. It is about 500 feet from the Iowa side. This is the channel used by steamboats going up and down the river. There is no other channel and never was since I know, except the one I have named. On page 40 this same witness says: "I was connected with steamboating as captain and pilot for 40 years."

Samuel Speake: I have been a pilot since 1858 (Rec., P. 16).

Q. 14, Page 47. Tell the Court where the main navigable channel of the river was under that bridge prior to the building of the bridge. A. The only channel is about, I suppose, 30 feet outside of the little pier to the left. I suppose about 500 feet from the Iowa shore (Rec., P. 47). The channel I have described is the channel used by steamboats going up and down the river and they used no other (page 47).

R. S. Owen. Page 50: I am 65 years old. Have been pilot and master of steamboats for 50 years. I began as pilot in 1852. Question 13 on page 51: How far east of the pivot pier is the navigable channel of the river. A. I consider the pivot pier as standing in the middle of the channel. It is where we run before the bridge was there.

I don't know of any other channel. "The record contains much more of this kind of testimony, but we deem this sufficient to show that the main navigable channel is not

to exceed 500 feet east of the Iowa shore. There is nothing in the record to show any other channel, as our Supreme Court well says in passing upon the question.

As to the second question presented by this record: We insist that the Keokuk and Hamilton Bridge Company is an Illinois corporation for assessment purposes, and that its situs or domicile is in Illinois and not in Iowa; that a corporation can not have two domiciles, and that the assessments were made in precise conformity with the returns or reports made by the Keokuk and Hamilton Bridge Company, and were not therefore fraudulently made.

The act incorporating this company is as follows:

"AN ACT *incorporating and chartering the Keokuk and Hamilton Bridge Company.*

SECTION 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly,* That Artois Hamilton, Hugh W. Sample, John McCune, Bryant Bartlett and Samuel R. Curtis, their associates, successors, heirs and assigns, be and are hereby incorporated and created into a body corporate under the name and style of the Keokuk and Hamilton Bridge Company, with power to build, construct, maintain and use a bridge for railroad and other purposes over the Mississippi river or that portion within the jurisdiction of the State of Illinois, from or near the town of Hamilton, in the County of Hancock, to Keokuk, in Iowa, in such manner as will not materially obstruct the navigation of said river. And to connect by railroad or otherwise said bridge with any railroad or railroads terminating or approximating to such bridge within this State or the State of Iowa, to unite and consoldidate its franchise, stock and property, or any portion thereof with any railroad or other company or companies in this or any other state, to fix the amount of the capital stock, to divide, transfer, increase or diminish the same, to create and contract debts, borrow money, lease or mortgage the whole or any portion of the property, effects and franchises of the company; to contract, bargain and agree with any person, persons, company or companies for and in the construction and use of said bridge and the appurtenances, to sell or lease said bridge or franchise or any portion thereof to any

company or corporations, and take and acquire the right of way, stone and all other privileges essential and usual in the construction of the improvement herein authorized according to the laws of this State relating to the rights of way for internal improvements or other purposes. The said company, their associates, successors or assigns to have five years from the passage of this act to commence said bridge and ten years thereafter to complete the same.

Sec. 2. This act to be taken as a public act from and after its passage, and shall be liberally and beneficially construed in favor of the company for the purposes herein contained.

SAMUEL HOLMES,
Speaker of the House of Representatives.
JOHN WOOD,
Speaker of the Senate.

Approved February 13, 1857.

WM. H. BISSELL."

By this act of the Legislature this company became under this act as its charter an Illinois corporation.

The fact that there were two corporations, known as the Keokuk and Hamilton Bridge Company, one in Illinois and the other in Iowa, and the further fact that such Iowa corporation was consolidated, as permitted by the laws of Illinois, with the Illinois corporation, does in no wise change the fact that it is an Illinois corporation, but would seem to leave no doubt upon that question.

It is claimed by the plaintiff in error that, notwithstanding the fact that the bridge company was originally chartered as an Illinois corporation, and that the Iowa corporation consolidated with the Illinois corporation under the laws of Illinois, that they continued to be, as it were, two corporations, and the objection made is, that Illinois can not assess and tax the capital stock of this consolidated corporation, insisting that one-half of the capital stock is assessable and taxable in the State of Iowa. This might have well been taken if there were two distinct corporations, but there can be no such thing in Illinois,

under our laws, nor are we aware of any such law anywhere, as a part of a corporation being in one state and a part in another after consolidation.

At pages 175 and 176 of the printed record the following statement appears: "It is admitted that the defendant Bridge Company is a consolidated corporation, formed by consolidation of an Iowa with an Illinois corporation, to construct a bridge across the Mississippi river between Hamilton, Illinois, and Keokuk, Iowa, with main office at Keokuk."

The Keokuk and Hamilton Bridge Company is a corporation of the State of Illinois, and as such, under our laws, is liable to pay taxes upon its capital stock. This is hereby permissible and fully authorized under section 1, article 9 of our constitution, which is as follows:

"Sec. 1. The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn keepers, grocery keepers, liquor keepers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

Under the above article of the Constitution the Legislature of Illinois, as it was authorized to do, passed the following act for the assessment of property and for the levy and collection of taxes. Approved March 30, 1873. In force July 1, 1873. Section 1 of which is as follows:

"That the property named in this section shall be assessed and taxed, except so much thereof as may be in this act exempted:

"First—All real and personal property in this State.

Second—All moneys, credits, bond or stocks and other investments, the shares of stock of incorporated companies

and associations, and all other personal property, including property in transitu to or from this State, used, held, owned or controlled by persons residing in this State.

"Third—The shares of capital stock of banks and banking companies doing business in this State.

"Fourth—The capital stock of companies and associations incorporated under the laws of this State."

The question raised herein by the plaintiff in error is not a new one in Illinois, but has been passed upon by our Supreme Court not only in this case, but in a number of others.

In the case of the Quincy Railroad Bridge Company v. The County of Adams, reported in 88 Ill., at page 615, the Court, in passing upon a similar question, say:

"This was an action of debt brought to the Adams circuit court by the County of Adams, plaintiff, and against the Quincy Railroad Bridge Company, defendants, to recover a tax assessed against the capital stock of the bridge company for the year 1874 for county purposes. There were two special counts and the common counts in the declaration, to which the defendants pleaded seven pleas."

Only two of said pleas are important to the issues in this case, namely, 3 and 4. Number 3 is as follows:

"That it is a corporation created and existing under the laws of this State and the State of Missouri, and not otherwise."

Number 4 is as follows:

"That defendant is a corporation created for the purposes of constructing and maintaining a railroad bridge over and across the Mississippi river, under the laws of Illinois and Missouri, the said river forming a boundary between these states, and that the corporate powers and existence of the defendant company are, under and by virtue of the laws of this State, only a part."

These two pleas, it seems to us, present clearly the second question in issue in the case at bar, and the Court in passing upon these pleas, say:

"The demurrer to the special pleas clearly presents this question, and it has been argued elaborately and ably by counsel, are appellants a corporation so created under the laws of this State as to bring it under the operation of the fourth clause of section one of the Revenue act of 1872?"

"The first section provides that the property named in this section shall be assessed and taxed, except so much as in this act may be exempted:

" 'First, all real and personal property in this State. Second, all moneys, credits, bonds or stocks, etc. Third, the shares of capital stock of banks and banking companies doing business in this State. Fourth, the capital stock of companies and associations incorporated under the laws of this State.' Rev. Stat. 1874, p. 357.

"Appellants give the history of the creation of their company, by which it will be seen that by an act of the General Assembly of this State, approved February 10, 1853, and renewed by act of February 15, 1865, the Railroad Bridge Company was incorporated. By an act of the Legislature of the State of Missouri, date not given, the 'Quincy Bridge Company' was incorporated, the object and purpose of both these corporations being to construct and operate a railroad bridge across the Mississippi river at Quincy, in this State, such object not being attainable by either company separately or by virtue of the authority thus granted by either state, the river being a common boundary, and the territorial line of neither state extending beyond the main channel of the river. Appellants say, in order to render either of these charters available, it became necessary to consolidate the two companies, and to secure for the company thus consolidated the consent and approval of each of said states, and the permission of the government of the United States to throw a bridge across one of its navigable rivers.

"On November 20, 1866, articles of agreement were entered into by these two companies thus incorporated, one by this State, the other by the State of Missouri, to consolidate, and such articles, duly filed and recorded in the office of the Secretary of this State, effected the consolidation of these two companies, and such consolidation was approved and legalized by the General Assembly of this State by an act, approved February 6, 1867, entitled "An act to legalize the Quincy Railroad Bridge Company, and to facilitate and encourage the construction of a railroad bridge over the Mississippi river at Quincy.' The first section of this act recognizes the consolidation of these two independent companies and their origin, and refers to the articles of consolidation on file in the office of the Secretary of State of this State, and the name and style of the Quincy Railroad Bridge Company was be-

stowed upon it, and there was conferred upon it all the rights, powers, privileges and immunities which were granted to the railroad bridge company by the act incorporating the same in 1863, and renewed in 1865.

"The consolidation of these companies is expressly recognized, and by the second section the company, as now existing, is fully recognized after the consolidation as a corporation. What is wanting to make appellants a corporation created by the laws of this State we are unable to see.

"But it is said by appellants, this corporation, although it derived some of its powers and in part its corporate existence from this State, derived an equal part from the sovereign State of Missouri, and therefore they are not a corporation created under the laws of either state. To this it is answered, and we think satisfactorily, that the Legislatures of this State and of Missouri can not act jointly, nor can any legislation of the last named state have the least effect in creating a corporation in this State. Hence, the corporate existence of appellants, considered as a corporation of this State, must spring from the legislation of this State, which, by its own vigor, performs the act. It is impossible in the very nature of their organizations that they can do so. They can not so fuse themselves into a single sovereignty, and as such create a body politic which shall be a corporation of the two states, without being a corporation of each state or of either state. As argued by appellee, the only possible status of a company acting under charters from two states is, that it is an association incorporated in and by each of the states, and when acting as a corporation in either of the states it acts under the authority of the charter of the state in which it is then acting, and that only, the legislation of the other state having no operation beyond its territorial limits. We do not, and can not, understand that appellants derive any of its corporate powers from the Legislature of the state of Missouri, but wholly and entirely derived from the General Assembly of this State. Consequently they are embraced in the first section of the revenue act, above cited.

"It is argued by appellants that the framers of the revenue act of 1872 did not intend to include them in the general designation of 'companies or organizations incorporated under the laws of this State,' and this is apparent from the fact that within a year after that law went into

effect the Legislature provided, in explicit terms, for the taxation of the property of the class of corporations to which their company belongs.

"The reference is to the act of May 1, 1873, entitled 'An act to provide for the assessment and taxation of bridges across navigable waters on the borders of this State.'

"We do not perceive this act has any relation to the question raised on this record. The act applies solely to bridge structures, and capital stock is not mentioned in it. The sole object, as appears from its various clauses, especially the emergency clause, was to declare such structures real estate, they, before that time having been regarded as personal property. This is seen by section 15 of the "act for the assessment of property and for the levy and collection of taxes," in force July 1, 1872. That section provides that the track, road or bridge shall be held to be personal property and listed and assessed as such in the town, district, village or city where the same is located or laid. Session Laws, 1872, p. 5.

"The emergency clause in the act of 1873 conclusively determines the purposes for which the act was passed. That clause is as follows: 'Whereas, by existing law, such bridge structure cannot be sold for delinquent taxes, so as to convey a good title thereto, therefore an emergency,' etc, Nothing appears in any of the provisions of this act expressing or impliedly exempting the companies owning such structures from the payment of taxes upon their capital stock.

"It is further argued by appellants that the Legislature intended to limit the tax of capital stock to companies exercising corporate powers wholly and solely under the laws of this State. Appellants say this is evident from the fact that the capital stock of companies existing in part by virtue of the laws of a sister state, can not be equitably assessed or collected.

"We fail to perceive this supposed dilemma. Precise and exact equity can not, perhaps, be done to any corporation in the assessment of its capital stock, but there can be no more difficulty in doing so with such a corporation as appellants than with any other corporation, and although the capital stock of appellants may designate its entire property, as well in Missouiri as in this State, the same may be said of all other corporations having property in different states This is no reason why the capital stock should not be taxed at all. Suppose, as suggested by appellants, the capital stock of appellant should be assessed and taxed

by the authorities of the state of Missouri, would it follow the law of our State is therefore invalid and must not be enforced? Capital stock, or that kind of property designated as such, is not the identical lands, chattels and other articles of property possessed by the corporation, but as this Court defined it in Porter et. al. *v.* Rockford, Rock Island & St. Louis R. R. Co., 76 Ill., 561, means, as used in the act of 1872, not shares of stock, either separately or in the aggregate, but one intended to designate the property of the corporation subject to taxation, not in separate parcels, but as an homogeneous unit, partaking of the nature of personalty, and subject to the burdens imposed upon it at the domicile of the owner. Who, in this case, is the appellant corporation, and whose domicile is here, where it exercises corporate franchises, where its business is done, where its franchises are exercised, and where it is engaged it in the prosecution of the corporate enterprise? Bristol *v.* Chicago & Aurora R. R. Co., 15 Ill., 436. However this corporation may be treated by the authorities of the State of Missouri, the authorities of this State must regard and treat the company as domiciled here, and liable to taxation upon all its property which is of such a nature as to be taxable at the residence of the owner. There is no evidence in the record that appellants have been over-assessed or taxed, or that the slightest injustice has been done to appellants.

"There is no need to pursue this discussion farther. We hold appellant is a corporation created under the laws of this State, and its capital stock properly taxable, and properly assessed and taxed, and the judgment of the Circuit Court was right and must be affirmed."

Following this decision, this same question is again presented to our Supreme Court in the case of the Ohio & Mississippi R. R. Co. *v.* Herman G. Weber, reported in 96 Ill., at page 456. In that case Justice Dickey in deliverinp the opinion of the court says: "Where a corporation is formed under our laws by consolidation of other corporations (which are merged into the new corporation thus formed), and where one of the constituent companies was incorporated under the laws of this State, the new corporation thus formed is to be considered as one of the 'companies incorporated under the laws of this State,' within the terms and meaning of the last clause of the first section of the Revenue Act of March 30, 1872; and

the capital stock (located or used in this State) of such corporation is subject to be assessed and taxed as such. There can be no distinction in principle between the status of such corporation and that of a corporation operating its business in two adjoining states, having a charter for such purpose from each of such states, and that has been decided to be the law applicable to the latter class of companies."

Quincy Bridge Co. v. County of Adams, 88 Ill., 615.

The case just above cited was passed upon in our Supreme Court in 1880, and it seems to have been acknowledged to have been the law, for we find no other case upon the subject until 1896, when the plaintiff in error in this case again raises the question, and our own Supreme Court, in passing upon the case at bar, as reported in 161 Ill., at page 134, Justice Baker rendering the opinion of the Court, in speaking upon this question, said:

"One of the objections made by appellant to the rendition of judgment was, that the capital stock assessments for 1891 and 1892 were by the State Board of Equalization based upon the theory that the entire capital stock of the company was owned and subject to taxation in Illinois, when only one-half thereof was subject to taxation in this State, and the other half in Iowa. It seems that appellant is a consolidated corporation, formed by the consolidation of a corporation in Illinois with one in Iowa, both formed for the construction of a bridge across the Mississippi river, the boundary between said states. Assuming the correctness of the claims made by appellant as to what was the theory upon which the Board of Equalization acted in this regard, it seems to be in conformity with the ruling and decision of this Court in Quincy Bridge Co. v. Adams County, 88 Ill. 615. According to the doctrines of that case, the corporate existence of appellant, considered as a corporation of this State, springs from the legislation of this State, and it is to be regarded and treated by the authorities of this State as domiciled here, and liable to taxation upon all its property which is of such a nature as to be taxable at the residence of the owner; and the kind of property denominated as 'capital stock' does not mean shares of stock, either separately or in the aggregate, but designates the property of the corporation subject to taxation as an homogeneous unit, par-

taking of the nature of personalty, and subject to the burdens imposed upon it at the domicile of the owner. The said Quincy Bridge Co. case is cited and approved in the subsequent case of Ohio and Mississippi Railroad Co. vs. Weber, 96 Ill. 443."

There are several provisions of the statute of this State relating to the assessment and taxation of the capital stock of corporations to which we desire to call the attention of the Court. Secs. 32 and 33 of the Revenue Act, as it stood in 1893 and 1894, are as follows:

"Sec. 32. Bridges, express, ferry, gravel road, gas, insurance, mining, plank road, stage, steamboat, street railroad transportation, turnpike, and all other companies and associations incorporated under the laws of this State, other than banks organized under any special or general law of this State, and the corporations required to be assessed by the local assessors, as hereinbefore provided, shall, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of its capital stock, setting forth particularly:

"First—The name and location of the company or association.

"Second—The amount of capital stock authorized, and the number of shares into which such stock is divided.

"Third—The amount of capital stock paid up.

"Fourth - The market value, or if no market value, then the actual value of the shares of stock.

"Fifth—The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

"Sixth—The assessed valuation of all its tangible property. Such schedule shall be made in conformity to such instruction and forms as may be prescribed by the Auditor of Public Accounts. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return from the best information which he can obtain.

"Sec. 33. Such statements shall be scheduled by the assessor, and such schedule, with the statements so scheduled, shall be returned by the assessor to the county

clerk. Said clerk shall, at the time he makes his report of assessment, forward to the Auditor all such schedules and statements so returned to him. The Auditor shall annually, on the meeting of the State Board of Equilization, lay before said board the schedules and statements herein required to be returned to him; and said board shall value and assess the capital stock of such companies or associations in the manner provided in this act."

Section 109 of the Revenue Act is as follows:

"The State board of Equalization shall assess the capital stock of each company or association, respectively, now or hereafter incorporated under the laws of this State, in the manner hereinbefore in this act provided. The respective assessments so made (other than the capital stock of railroad and telegraph companies), shall be certified by the Auditor, under direction of said board, to the county clerk of the respective counties in which such companies or associations are located, and said clerk shall extend the taxes for all purposes on the respective amounts so certified the same as may be levied on the other property in such towns, districts, villages or cities in which such companies or associations are located."

The records in these cases disclose a net assessment made by the State Board of Equalization in 1893 of $210,000 (after deducting the value of tangible property) upon a paid up capital stock of $1,000,000 as reported by the company, and in 1894 a net assessment of $225,000 upon a paid up capital stock of $1,000,000. (See Rec. p. 147.) The record pp. 138-9, also contains a statement of the capital stock of the plaintiff corporation made by Theodore Gilman on behalf of the corporation, as follows:

"Statement by Theodore Gilman of capital stock, etc., etc., as required by Section 32 of an act of the Legislature of the State of Illinois entitled, 'An act for the assessment of property and the levy and collection of taxes,' approved March 30, 1872.

"First—Name of company or association: Keokuk and Hamilton Bridge Company. Location of company or association, Keokuk, Iowa. Principal office or place of business in the————of——school district No——T——R——

"Second — Amount of capital stock authorized, $1,000,000; Number of shares into which said capital stock is divided, 10,000.

"Third — The amount of capital stock paid up, $1,000,000; Number of shares actually issued, 10,000.

"Fourth — Market value of the shares of stock, none; if no market value, then the actual value, none.

"Fifth — The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property; first mortgage, $1,000,000; unpaid interest thereon, $900. $1,900,000.

"Sixth — The assessed valuation of: Lands and structure, $218,000; lots ———; personal property ———: total assessed valuation of all tangible property of said company, $218,000.

"I, Theodore Gilman, do solemnly swear that the above statement is true, according to the best of my knowledge and belief.

THEODORE GILMAN.

"Subscribed and sworn to before me this 27th day of August 1894.

(SEAL) S. TABER BAYLES,
Notary Public, Kings County."

This statement is, we submit, conclusive upon plaintiff in error. It was by statute made the basis of the action of the State Board of Equalization. Secs. 32 and 33 of the Revenue act above quoted, made it the duty of plaintiff in error to make such statement and deliver the same to the assessor to return the same to the county clerk; of the county clerk to forward the same to the auditor; of the Auditor to lay the same before the State Board of Equalization, and the Board of Equalization to assess the value of the capital stock of such corporation in the manner provided by that act.

The record discloses that the law concerning the assessment and taxation of the capital stock of the plaintiff in error was complied with in every particular, and plaintiff in error can not now be heard to say either that it was a consolidated corporation, and for that reason only one-

half to be assessed in Illinois, or that its capital stock was other or different than that shown in the foregoing statement. If its capital stock was other or different from that mentioned in the statement, it was its duty to lay the facts before the Board of Equalization, and not wait, as was done in this case, until the assessment was made and the tax levied and then seek, in the County Court, to defeat both assessment and tax on grounds not disclosed in its statement. As we view it, the facts disclosed by the record, do not involve the question of the power of the Board of Equalization to assess the capital stock of a consolidated corporation, nor the extent nor method of such assessment. By the act of 1857, heretofore quoted, the Keokuk and Hamilton Bridge Company was made a body corporate, with power to build, construct maintain and use a bridge for railroad and other purposes over the Mississippi river, or that portion within the jurisdiction of the State of Illinois, etc. In 1894 the Keokuk and Hamilton Bridge Company reported its capital stock to the Board of Equalization for assessment at $1,000,000. Acting upon that report, the Board of Equalization assessed its capital stock at $285,000 and the taxes of 1894 were extended upon that valuation. Counsel for plaintiff in error now claim, and claimed in the County Court, that it was a consolidated corporation and that the assessment should have been made on the basis of one-half instead of its full capital stock. The reply to that is three-fold:

"First—There is nothing in this record showing that it was a consolidated corporation of Iowa and Illinois, but the reverse showed it was an Illinois corporation at the time the Board of Equalization made the assessment.

"Second—That the assessment of the capital stock was based upon a return or report made by the plaintiff in error, stating that its paid up capital stock was $1,000,000, and that that statement is conclusive upon plaintiff in error.

"Third—That the name of the alleged consolidated corporation, the Keokuk and Hamilton Bridge Company, is identical with that of the original corporation, incorpor-

ated under the laws of this State in 1857, and that if such original corporation had changed its capital stock or become consolidated with another corporation, or for any reason it was not assessable in Illinois, it was the duty of the plaintiff in error to bring those facts to the attention of the Board of Equalization before the assessment was made."

Their own statement made to the Board of Equalization is made as an Illinois corporation, and under the laws of Illinois.

We submit that no federal question is presented in this record that justifies plaintiff in error in asking this Court to review the judgment of the Supreme Court of the State of Illinois. The question as to the boundary line between the States of Iowa and Illinois, we have presented elsewhere in this brief, and believe that it has been fully settled by a former decision of this Court, and that no other question is submitted by this record entitling the plaintiff to be heard in review of the decision of the Supreme Court of Illinois.

The assignments of error in the County Court of Hancock County upon appeal by the Bridge Company to the Supreme Court of Illinois, which fully appear on pages 196 and 197 of the printed record, nowhere present a federal question of sufficient importance to entitle the plaintiff in error to be heard in this Court. The first assignment refers solely to the admission of evidence, as well as the second. The third assignment refers to the rendition of judgment on the capital stock and, among other things, uses this language:

"Said capital stock is a tax on personal, not real, property, and is chargeable only at the place of the main office and place of business of the defendant, Keokuk, in the State of Iowa, and is made in violation of the rights of defendant contrary to the laws regulating commerce between the states, and contrary to the constitution and laws of the United States."

Assignment 4 refers solely to the state line between the states. Assignment 5 says:

"The Court erred in ignoring the act of Congress fixing the western boundary of the State of Illinois, and rendering judgment for a tax levied against the property of defendant as in Illinois, when many hundred feet thereof is in Iowa."

The sixth, seventh and eighth have no reference whatever to any matter that would raise a federal question. While it is true that in the objections filed before the Board of Review and before the Board of Supervisors, plaintiff in error was a little more specific, and there charged in one place that certain acts were contrary to and in violation of the fourteenth amendment to the Constitution of the United States. Yet no such statement was made in the assignment of error to the Supreme Court, and none passed upon by the Supreme Court, as will appear from the opinion rendered in said case, found in 167th Illinois at page 16, the first paragraph of which reads as follows:

"This is an appeal from a judgment of the County Court of Hancock county for delinquent taxes assessed against appellant for the year 1894. The grounds of reversal are: First, the assignments were fraudulently made; second, the whole of the capital stock is assessed in this State, whereas an undivided half of it is taxable in Iowa; third, the judgment is upon an assessment upon a part of appellant's bridge not in the State of Illinois, but in the State of Iowa."

Thus it appears that the Supreme Court of Illinois regarded these as the only questions presented by the assignments of error, and in fact, they were, from which it also appears that no federal question was presented, and none passed upon by them.

This Court will not take jurisdiction of an appeal or writ of error from the Supreme Court of the State, unless the record clearly and unmistakably presents to that Court for its determination a federal question. It is not sufficient to state that a federal question is involved or that a decree or judgment of the lower court is in violation of the Constitution of the United States, or some law of the United States; but it must appear from the facts clearly stated

that a federal question was presented and passed upon by the Supreme Court of the State from which such an appeal or writ of error is taken. This Court, in the case of the Oxley Stave Company vs. Butler County, 166th United States, have very fully discussed the questions here presented, and in the opinion in that case on page 653, the Court say:

"Looking into the record we do not find that any reference was made in the Court of original jurisdiction to the Constitution of the United States; nor can it be inferred from the opinion of the Supreme Court of Missouri that that Court was informed by the contention of the parties, that any federal right, privilege or immunity was intended or asserted. For aught that appears the State Court proceeded in its determination of the case without any thought that it was expected to decide a federal question."

We think this same language would equally apply to the opinion rendered in this case by the Supreme Court of the State of Illinois.

It surely will not be contended that there is such a statement and presentation of a federal question, as contemplated by the statute, which says:

"But it can not review the said final judgment even if it denied some title, right, privilege or immunity of the successful party, unless it appears from the record that such title, right, privilege or immunity was specially set up or claimed in the State Court, as applying to such party, under the Constitution or some treaty, statute, commission or authority of the United States."

In the case above referred to, at page 654, this Court, in their opinion, say:

"Do such general allegations meet the statutory requirement that the final judgment of a state court may be reviewed here, if it denies some right, title, privilege or immunity specially set up or claimed under the Constitution or authority of the United States? We think not. The specific contention now is that the decree of the Butler County Circuit Court in the suit instituted by the county of Butler was not consistent with the due process of law required by the Fourteenth Amendment to the Constitution

of the United States. But can it be said that the complainant specially set up or claimed the protection of that amendment against the operation of that decree by simply averring—without referring to the Constitution, or even adopting its phraseology, that the decree was passed against deceased persons as well as in the absence of necessary or indispensable parties."

Again in this same opinion, on page 655, this Court say:

"This statutory requirement is not met if such declaration is so general in its character that the purpose of the party to assert a federal right is left to mere inference."

But without quoting further from that opinion, we submit that it is practically decisive of the case at bar. (See also Pim vs. St. Louis, 165 U. S., 373; Zadig vs. Baldwin, 166 U. S., 485; Kipley vs. Illinois, 170 U. S., 182.)

In Citizens' Bank v. Board of Liquidation, 98th U. S., page 142, the Court say:

"We have often decided that it is not enough to give jurisdiction from the judgments of the State courts for a record to show that a federal question was argued or presented to that Court for decision. It must appear that its decision was necessary to the determination of the cause, and that it actually was decided or that the judgment as rendered could not have been given without deciding it."

In Brown vs. Atwell, 92 U. S., at page 329, the Court say:

"We have often decided that it is not enough to give us jurisdiction from the judgments of the State courts for the record to show that a federal question was argued or presented to that court for decision. It must appear that its decision was necessary to the determination of the cause, and that it was actually decided, or that the judgment as rendered could not have been given without deciding it." (See authorities cited).

In Bolling vs. Lersner, 91 U. S., at page 594, the Court say:

"We can not re-examine a judgment or decree of a State Court simply because a federal question was presented to that court for determination to give us jurisdiction. It must appear that such a question was in fact decided or

that its decision was necessarily involved in the judgment or decree as rendered." (See, also, decision cited in this case).

In Santa Cruz County Supervisors vs. Santa Cruz Railroad Company, 111th U. S., at page 362, the Court say, in speaking of the question of jurisdiction, as follows:

"That was not the question presented to or decided by the said Court. In that Court the inquiry was, whether the proceedings of the board, all charged to the county, were according to law; not whether the law under which the proceedings were had was constitutional and binding on the tax-payers.

"The State Court decided that the proceedings were in accordance with the requirements of the law, and thus created an obligation on the part of the county to deliver the bonds, which was not discharged by the repealing statute relied on. This decision involved no question of federal law, and is not reviewable here."

It will be noticed from the record in the case at bar that the constitutionality of the law under which the assessment of this bridge company was made was not raised by plaintiff in error, but they insisted, as in the case above referred to, that the assessment and levy of the taxes was not in conformity to the law then in existence, and a reading of the decision of the Supreme Court of Illinois shows that that was the question passed upon by the Court, and not the constitutionality of any law of the State or of the United States.

In "The Victory" in 6th Wallace, at page 384, Justice Miller, delivering the opinion of this Court, says:

"The question which we are asked to decide, viz: whether such a case as this is one of admiralty, and is therefore exclusively within the jurisdiction of the Courts of the United States, and whether the statute of Missouri which authorized the proceedings is for that reason void—is an interesting one; and if it had been raised and decided in the Court from which the record comes, we would be bound to decide it here. But we do not think it a fair inference, from that record, that the question was presented

to the Court or was decided by it. It has been repeatedly held by this Court that before it can entertain jurisdiction to revise the judgment of a State Court, the point which we are called upon to review must have been raised, and must have been decided adversely to the plaintiff in error. This is so well established that it would be useless labor to cite authorities to sustain it."

In Worthy vs. The Commissioners, 9th Wallace, at page 613, this Court say:

"It is manifest to us that this Court has no jurisdiction of the present case. There was no decision by the Supreme Court of North Carolina against the validity of any treaty or act of Congress, or authority exercised in the United States; nor in favor of the validity of a statute of or authority exercised under a statute, and alleged to be repugnant to the constitution, treaties or laws of the United States. It is true, in the brief of the counsel for plaintiff, it is urged that the right of the plaintiff is protected by the first section of the fourteenth amendment, but this right does not appear to have been set up or specially claimed in the State Court, and this is essential to jurisdiction here."

We again call attention to the fact that from the opinion of the Supreme Court of Illinois in this case, found on page 198 of the printed transcript of record, it will be seen that no question of a federal nature was disposed of in that opinion other than the boundary line between the states, which question has already been decided, as therein stated, by this Court. It will also be noticed that in the assignments of error on pages 196 and 7 of the printed transcript of record, no case is especially set forth which presents any federal question, as will readily be seen by reading the assignments of error.

In Joshua Maxwell and Henry Walker vs. H. Newbold, et al., in 18th Howard, at page 511 and 515, in discussing this question the Court say:

"It is true that in some of the earlier cases, when writs of error to State Courts were comparatively new in this Court, and broader and more comprehensive, the rule was sometimes recognized; and in the case of Miller vs. Nicholls, 4th Wheat. 311, it was said to be sufficient to

give jurisdiction that an act of Congress was applicable to the case, but experience showed that this rule was not a safe one and that it might sometimes happen that, although in one view of the subject, an act of Congress or a clause of the Constitution might be applicable to the case, yet the State Court, upon a different view of the case, might have decided, upon principles of State law, altogether, independent of any provision in the Constitution or laws of the United States, and in no wise in conflict with either."

Further on, after reviewing former opinions, the Court say:

"Accordingly all of the preceding cases are reviewed and commented on in the opinion delivered by the Court in that case." (Crowell vs. Randall, 10 Peter 368.) "And the doctrine clearly announced that in order to give jurisdiction to this Court, it must appear by the record that one of the questions stated in the 25th section of the act of 1789 did arise and was decided in the State Court, and that it was not sufficient that it might have arisen or been applicable. It must appear that it did arise and was applied.

This rule has been uniformly adhered to since the decision of that case." Again the Court further says:

"Applying this principle to the case before us, the writ of error can not be maintained. The questions raised and decided in the State Circuit Court, point altogether for their solution, to the laws of the state, and make no reference whatever to the Constitution or laws of the United States."

The Court in conclusion says:

"The statutes complained of in this case should have been stated, without that the Court can not apply them to the subject matter of litigation to determine whether they violated the Constitution of the United States."

No presentation of any part of the Constitution relied upon by plaintiffs in error or of any law of Congress was specially or particularly set out in the record in this case.

The assignments of error filed, under the rules laid down in the cases above cited, do not present such a case as to entitle plaintiff in error to a review of the decision of the State Court.

Respectfully submitted,

EDWARD C. AKIN,
Attorney General.

O. F. BERRY,
Of Counsel.

KEOKUK AND HAMILTON BRIDGE COMPANY *v.* ILLINOIS.

ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 26. Submitted November 15, 1899. — Decided January 8, 1900.

The boundary line between the States of Illinois and Iowa is the middle of the main navigable channel of the Mississippi River; but whether in assessing taxes in Illinois on a bridge running from one State to the other, in crossing that bridge the dividing line was improperly located, is a question of fact the finding of which by a state court is not reviewable here.

The same may be said concerning the contention as to whether the bridge was assessed at more than its value and not at the same proportion of its value as other property was.

The tax on the capital stock was not a tax on franchises conferred by the Federal government, but on those conferred by the State, and as such is not open to objection here.

The tax was not a tax on interstate commerce.

Opinion of the Court.

As to the objection that the entire capital stock was assessed by the state board of equalization, it is enough to say that the question that the action of that board was in violation of the Constitution of the United States, except so far as it was claimed to be an interference with interstate commerce, was not raised, and therefore cannot be considered here for the first time.

No opinion is intimated on the contention that the judgment was erroneous because the assessment, in effect, included the entire capital stock of plaintiff in error as a consolidated corporation.

THE case is stated in the opinion of the court.

Mr. Walter D. Davidge and *Mr. Walter D. Davidge, Jr.*, for plaintiff in error.

Mr. Edward C. Akin and *Mr. O. F. Berry* for defendant in error.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This is a writ of error to review the judgment of the Supreme Court of Illinois affirming a judgment of the county court of Hancock County, in that State, for delinquent taxes assessed against the Keokuk and Hamilton Bridge Company for the year 1894.

The Keokuk and Hamilton Bridge Company was incorporated by an act of the general assembly of the State of Illinois in 1857, with power to build, maintain and use a bridge for railroad and other purposes over the Mississippi River from or near the town of Hamilton, in the county of Hancock, to Keokuk, in the State of Iowa, and was authorized to connect the bridge by railroad or otherwise with any railroad or railroads terminating thereat or approximately thereto, and to consolidate with any railroad or other company or companies in Illinois or any other State. A similar corporation was organized under the laws of the State of Iowa, and the two corporations consolidated with the main office at Keokuk.

Authority to construct and maintain the bridge was granted the two companies by the act of Congress of July 25, 1866, c. 244, 14 Stat. 244.

The record discloses that the company objected to the assessment of its tangible property as made by the assessor of the township in which the Illinois end of the bridge was situated, and applied to the township board of review for a reduction, protesting that the property was overvalued; "that the Fourteenth Amendment to the Constitution of the United States has been violated, in that equal justice and protection to property of the said bridge company has been denied;" "that the property assessed and described by the assessor lies partly in the State of Iowa and is not subject to taxation in Illinois;" etc. The board of review denied the relief asked, and the bridge company appealed to the board of supervisors of Hancock County, which also refused to change the assessment. The collector of Hancock County then applied to the county court, at its May term 1895, for judgment on the delinquent tax list, including the assessment against the bridge company, to which the company filed its objections, rehearsing the proceedings which had been theretofore taken, the objections made, and the evidence adduced. Before a hearing on these objections was had, the parties stipulated that the collector might "insert in his application for judgment the capital stock tax for the year 1894 levied by the state board of equalization against said company," which was done.

The bridge company thereupon filed its objections to any judgment for the capital stock tax, as follows:

"Objections by 'the Keokuk & Hamilton Bridge Company' to judgment against its bridge and approach.

"The original objections filed to said May term covering the application as there made.

"The application was amended in June by adding claims for capital stock tax of 1894, $1029.90.

"This objection is to the proposed judgment against said property for said claimed tax on the capital stock of said company —

"1st. Because said bridge company is a consolidated corporation of the States of Illinois and Iowa, one half in each of said States, and its entire business is that of interstate commerce, and any tax thereon is a tax upon such

interstate commerce and is without authority of law and void.

"2d. Such claimed capital stock tax is levied upon the whole capital stock, when only one half thereof, if any, is assessable in Illinois.

"3d. The only tax assessable against said property is upon its tangible property in Illinois.

"4th. Said pretended assessment of capital stock is wholly void because not made in the manner required by law nor according to the rules of the state board of equalization."

Considerable evidence was introduced, including the proceedings of the state board of equalization, from which it appeared that the capital stock of the bridge company was returned at one million dollars; that the total amount of its indebtedness except for current expenses, and excluding from such expenses the amount paid for the purchase or improvement of property, was one million dollars, with unpaid interest thereon amounting to nine hundred thousand dollars; that the assessed valuation of lands and structure was $218,000; and that the state board of equalization placed the valuation for assessment of capital stock at $30,080. The tax on the tangible property was $2708.61, and on the capital stock $1019.17. Judgment was rendered by the county court for those amounts and interest. From this judgment the case was carried on appeal to the Supreme Court, and there affirmed.

Among the errors assigned in that court were that "the court erred in overruling defendant's (appellant's) objections to the rendition of judgment of the capital stock tax (so-called) and rendering judgment thereon. Among the reasons for said error are the following:

"*a.* Said capital stock tax is a tax on personal, not on real, property, and is chargeable only at the place of the main office and place of business of defendant (appellant) — Keokuk, in the State of Iowa — and is made in violation of the rights of defendant (appellant), contrary to the laws regulating commerce between the States and contrary to the Constitution and laws of the United States.

"*b.* If any part of said capital stock of defendant (appel-

lant) is taxable in Illinois, it can only be that portion thereof that would correspond to the length of the bridge in Illinois as compared to the whole length of bridge, represented by said capital stock — not exceeding one half of said stock — yet the judgment is rendered for the tax assessed against the whole of the capital stock of defendant (appellant) as though all was located in Illinois;" that the judgment was against the evidence as to the length of the bridge in Illinois; and that the court ignored the act of Congress fixing the western boundary of Illinois.

In the opinion of the Supreme Court of Illinois, *Keokuk & Hamilton Bridge Co.* v. *The People*, 167 Illinois, 15, it is said: "The grounds of reversal are, first, the assessments were fraudulently made; second, the whole of the capital stock is assessed in this State, whereas an undivided half of it is taxable in Iowa; third, the judgment is upon an assessment upon a part of appellant's bridge not in the State of Illinois, but in the State of Iowa. The facts upon which the first two grounds are based are substantially the same as those upon which similar objections were urged in cases between the same parties in 145 Ill. 596, and 161 Id. 132 and 514, and are disposed of adversely to the appellant by those decisions."

The last point was disposed of on the ground that the county court was justified on the evidence in finding that no part of the bridge assessed was in the State of Iowa.

In *Keokuk & Hamilton Bridge Company* v. *The People*, 145 Illinois, 596, it was held that when the middle of a navigable river becomes the boundary line between two States, the middle of the current or channel of commerce will be regarded as the boundary line; that an assessor in Illinois in assessing a bridge over a navigable river forming the boundary of the State for the purpose of taxation, has no right to assess any part of such bridge that is located beyond such boundary line; and that unless the property has been fraudulently assessed more than its fair cash value, the courts cannot interfere with the action of the assessor. The judgment in that case was reversed because the assessor had assessed several hundred

feet of the bridge as in Hancock County, Illinois, which was located beyond the boundary line of the State.

In *Keokuk &c. Bridge Co.* v. *People*, 161 Illinois, 132, it was ruled that in fixing the value for taxation the assessor acts judicially, and the courts cannot revise his assessment on the mere ground of erroneous valuation; that on an application for judgment for delinquent taxes, it may be shown that the tax is unauthorized by law, or is assessed on property not subject to taxation, or that the property has been fraudulently assessed at too high a rate; that the capital stock of a corporation formed by the consolidation of corporations of different States is properly taxable in one of said States so far as the corporation of that State is concerned; that the kind of property denominated in the revenue law of Illinois "capital stock" does not mean shares of stock, either separate or in the aggregate, but designates the property of the state corporation subject to taxation, as a homogeneous unit partaking of the nature of personalty, and subject to the burdens imposed on it by the State of its creation. The judgment was reversed because the assessment was illegal in including a certain number of feet of the bridge which was located in the State of Iowa.

In *Same* v. *Same*, Id. 514, the rulings in the prior case so far as involved were affirmed.

The foregoing are the decisions to which reference is made in the opinion of the state Supreme Court in the case before us.

The errors assigned in this court are in substance that part of the bridge assessed was in the State of Iowa; that the bridge was assessed at more than its value, and not in the same proportion as other property was assessed; that no part of the capital stock was assessable, because a tax on it was in effect a tax on interstate commerce, and was a tax on franchises conferred by the Federal government; and that the whole of the capital stock was assessed, although one half of the bridge was located in the State of Iowa.

1. In *Iowa* v. *Illinois*, 147 U. S. 1, it was adjudged that the boundary line between the two States was "the middle of the main navigable channel of the Mississippi River." Where

that line divided the bridge was a question of fact, and it is not within our province to review the findings of the courts below in regard to the part assessed in Illinois.

2. For the same reason, the contention as to whether the bridge was assessed at more than its value, and not at the same proportion of its value as other property was, need not be considered. Perhaps we may properly add that we perceive no adequate ground to question the conclusion that the county court did not err in declining, on the evidence, to set aside the determinations of the boards of review sustaining the action of the assessor.

3. The tax on the capital stock was not a tax on franchises conferred by the Federal government, but on those conferred by the State, and as such not open to objection. *Central Pacific Railroad* v. *California*, 162 U. S. 91; *Henderson Bridge Company* v. *Kentucky*, 166 U. S. 150. Nor was the tax a tax on interstate commerce. This was so ruled in *Henderson Bridge Company* v. *Kentucky*, *supra*. It was there said:

"The company was chartered by the State of Kentucky to build and operate a bridge, and the State could properly include the franchises it had granted in the valuation of the company's property for taxation. *Central Pacific Railroad Company* v. *California*, 162 U. S. 91. The regulation of tolls for transportation over the bridge considered in *Covington & Cincinnati Bridge Company* v. *Kentucky*, 154 U. S. 204, presented an entirely different question.

"Clearly the tax was not a tax on the interstate business carried on over or by means of the bridge, because the bridge company did not transact such business. That business was carried on by the persons and corporations which paid the bridge company tolls for the privilege of using the bridge. The fact that the tax in question was to some extent affected by the amount of the tolls received, and therefore might be supposed to increase the rate of tolls, is too remote and incidental to make it a tax on the business transacted." And see *Henderson Bridge Company* v. *Henderson City*, 173 U. S. 592, 622.

4. As to the objection that the entire capital stock was assessed by the state board of equalization, it is enough to say that the question that the action of that board was in violation of the Constitution of the United States, except so far as it was claimed to be an interference with interstate commerce, was not raised.

The Supreme Court of Illinois had repeatedly sustained the assessment on the whole capital stock as being an assessment on the capital stock of a corporation created by the State of Illinois. But in none of the cases in which the question of the validity of such capital stock assessments arose was the point considered that they were contrary to the Constitution of the United States.

In this case, and as to the tangible property, the objection was made that the assessment by the assessor of that tangible property was in contravention of the Fourteenth Amendment. But this was before the township board of review, and the board of supervisors, and had no relation to the assessment of capital stock, which by the laws of Illinois was dealt with solely by the board of equalization. In the county court, the objections made in the township board of review and in the board of supervisors as to the tangible property, were repeated as to that property, but the objections to the assessment on the capital stock were independent of and distinct from those, and raised no question in respect of the Constitution of the United States except that as to interstate commerce. And this was true as to the assignments of error in the state Supreme Court.

In *Dewey* v. *Des Moines*, 173 U. S. 193, it was held that where a Federal question is raised in the state courts, the party who resorts to this court cannot raise another Federal question, not connected with it, which was not raised in any of the courts below.

To justify our taking jurisdiction, the Federal question must be specially set up or claimed in the state court; the party must have the intent to invoke for the protection of his rights the Constitution or some statute or treaty of the United States, and such intention must be declared in some unmis-

takable manner. *Oxley Stave Company* v. *Butler County*, 166 U. S. 648. "In other words, the court must be able to see clearly from the whole record that a provision of the Constitution or act of Congress is relied upon by the party who brings the writ of error, and that the right thus claimed by him was denied. . . . Although no particular form of words is necessary to be used in order that the Federal question may be said to be involved, within the meaning of the cases on this subject, there yet must be something in the case before the state court which at least would call its attention to the Federal question as one that was relied on by the party, and then, if the decision of the court, while not noticing the question, was such that the judgment was by its necessary effect a denial of the right claimed or referred to, it would be sufficient. It must appear from the record that the right set up or claimed was denied by the judgment, or that such was its necessary effect in law. . . . It is not enough that there may be somewhere hidden in the record a question which, if raised, would be of a Federal nature. *Hamilton Company* v. *Massachusetts*, 6 Wall. 632. In order to be available in this court some claim or right must have been asserted in the court below by which it would appear that the party asserting the right founded it in some degree upon the Constitution or laws or treaties of the United States. In such case, if the court below denied the right claimed, it would be enough; or if it did not in terms deny such right, if the necessary effect of its judgment was to deny it, then it would be enough. But the denial, whether expressed or implied, must be of some right or claim founded upon the Constitution or the laws or treaties of the United States which had in some manner been brought to the attention of the court below. The record shows nothing of the kind in this case. A claim or right which has never been made or asserted cannot be said to have been denied by a judgment which does not refer to it. *Hamilton Company* v. *Massachusetts*, *supra*. A point that was never raised cannot be said to have been decided adversely to a party, who never set it up or in any way alluded to it. Nor can it be said that the

necessary effect in law of a judgment, which is silent upon the question, is the denial of a claim or right which might have been involved therein, but which in fact was never in any way set up or spoken of." 173 U. S. 198, 199, 200.

We are confined then to the only Federal questions which this record presents, and in disposing of these, as we have, no opinion is intimated on the contention that the judgment was erroneous because the assessment, in effect, included the entire capital stock of plaintiff in error as a consolidated corporation.

Judgment affirmed.